An Environmental Class Action Complaint: Bell v. Cheswick Generating Station

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Bell v. Cheswick Generating Station, 2013 U.S. App. LEXIS 17283, 43 ELR 20195, 2013 WL 4418637 (3d Cir. Pa. 2013)
GenOn Power Midwest, L.P. (GenOn) operates the Cheswick Generating Station, a 570-megawatt coal-fired electrical generation facility in Springdale, Pennsylvania (the Plant). Kristie Bell and Joan Luppe are the named plaintiffs in a class action complaint consisting of at least 1,500 individuals (the Class) who own or inhabit residential property within one mile of the Plant. The complaint was filed in April 2012 in the Court of Common Pleas of Allegheny County, PA. In July 2012, GenOn removed the case to the Western District of Pennsylvania, invoking the District Court's diversity jurisdiction.

The Class brought suit against GenOn, alleging that GenOn's operation, maintenance, control and use of the Plant released malodorous substances and particulates into the surrounding neighborhood, causing fly ash and unburned coal combustion byproducts to settle onto the Class members' property. Based on these allegations, the Class sought to recover compensatory and punitive damages under three state common law tort theories: (1) nuisance; (2) negligence and recklessness; and (3) trespass.

GenOn argued that because the Plant was subject to comprehensive regulation under the Clean Air Act, it owed no extra duty to the members of the Class under state tort law. The District Court agreed with GenOn and dismissed the case. The main issue on appeal for the Third Circuit was whether the Clean Air Act preempts state law tort claims brought by private property owners against a source of pollution located within the state.

The Third Circuit began its analysis by acknowledging the existence of two "savings" clauses in the Clean Air Act. The first is a "citizen suit savings clause," which preserves the right of citizens to seek enforcement under common law of any emission standard. The second is a "states' rights savings clause," which preserves the rights of states to adopt or enforce any standard or limitation respecting emissions of air pollutants.

The Third Circuit went on to note that, while the extent to which the Clean Air Act preempts state law tort claims against an in-state source of pollution was a matter of first impression in that Circuit, the Supreme Court addressed this issue in the context of the Clean Water Act in International Paper Co. v. Ouellette, 479 U.S. 481, 107 S. Ct. 805, 93 L. Ed. 2d 883 (1987). The Third Circuit noted that in Ouellette, the Supreme Court held that since the Clean Water Act also contains two "savings" clauses, one located in the citizen suit provision, and another that focuses on states' rights, the Act clearly preserves at least some state law tort actions. The Third Circuit then applied the Supreme Court's reasoning in Ouellette to the claims of the Class against GenOn, and ruled that, just as the savings clauses in the Clean Water Act preserve state tort actions for individuals, the savings clauses in the Clean Air Act serve the same function. The Third Circuit rejected GenOn's claim that a textual comparison of the two savings clauses at issue demonstrates a meaningful difference between them.

Finally, the Third Circuit rejected GenOn's contention that the holding would undermine the comprehensive regulatory structure established by the Clean Air Act by allowing the jury and the court to set emissions standards. In so doing, the Third Circuit noted

that the requirements of the Clean Air Act served as a regulatory floor, not a ceiling, and that states are free to impose higher standards, enforceable under state tort law, on their own sources of pollution.

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