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Qui Tam Suits Under the Refuse Act (Connecticut Action Now, Inc. v. Roberts Plating Co.)

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Connecticut Action Now, Inc. v. Roberts Plating Co.

As the preceding cases indicate, the Second Circuit, like courts all over the country, has been besieged in recent years by citizens seeking to enforce environmental laws. The enactment of new statutes, such as NEPA, has not deterred environmental plaintiffs from testing the possibilities presented by other statutes, both old and new. Clearly, a threshold question in a suit brought to enforce statutory provisions is whether the plaintiff has standing to bring the action. Although recent decisions have taken a liberal view of requirements,[100] a plaintiff must still show that he has been or may be injured in fact, economically or otherwise, and that the "interest sought to be protected . . . [is] . . . arguably within the zone of interests to be protected . . . by the statute . . . in question."[101] The case to be discussed in this comment demonstrates that, even where these requirements appear to be met the prospective plaintiff may find his action blocked by the nature of the statute under which he attempts to protect environmental interests.

In *Connecticut Action Now, Inc. v. Roberts Plating Co.*[102]

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100 *See* Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971); Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970); Citizens Committee for Hudson Valley v. Volpe, 425 F.2d 97 (2d Cir.), *cert. denied*, 400 U.S. 949 (1970); Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966); Scenic Hudson Preservation Conf. v. FPC, 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966). *But see* Sierra Club v. Morton, 405 U.S. 727 (1972), where the Supreme Court held that, while injury to noneconomic interests such as recreational and aesthetic values may be asserted, only those "for whom . . . aesthetic and recreational values . . . will [actually] be lessened" would have standing to allege that injury. *Id.* at 735. However, this holding would not apply to an injury which has an undifferentiated effect upon the entire population. Examples of such effects would include disruption of atmospheric conditions and threats to endangered species protected by statute. *See* CEQ—Third Annual Report 251 (1972). In such cases, any citizen would have standing to sue.

101 Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153 (1970). Numerous bills seeking to broaden standing criteria were introduced in the 92nd Congress. S. 1032, 92d Cong., 1st Sess. (1971) would have recognized the right of any person to bring suit in a federal court against any federal agency or private defendant to protect the environment. Similarly, H.R. 6862, 92d Cong., 1st Sess. (1971), would have conferred standing on a private party or class to sue any other party responsible for adversely affecting the environment. Plaintiff could also recover costs and punitive damages. *See* S. 2770, 92d Cong., 1st Sess. (1971) and H.R. 8331, 92d Cong., 1st Sess. (1971). The status of these bills is now indeterminate.

102 457 F.2d 81 (2d Cir. 1972), *aff'g* 330 F. Supp. 695 (D. Conn. 1971). Roberts Plating Company, Inc. has a metal finishing plant which, according to plaintiffs, discharges waste material into Fulling Mill Brook, a tributary of the Naugatuck River which flows into Long Island Sound.

Connecticut Action Now, Inc. is a non-profit conservation organization. David B. Beizer and Rita L. Bowlby, Connecticut citizens and owners of land situated on Fulling Mill Brook, were additional plaintiffs.

the court held that private citizens may not sue in *qui tam*[103] to enforce the Rivers and Harbors Act of 1899 (the Refuse Act).[104] The Act makes it a misdemeanor[105] to discharge waste into navigable waters[106] without a permit from the Secretary of the Army.[107] The penalty for noncompliance with the Refuse Act is imprisonment or a fine, "one-half of said fine to be paid to the person or persons giving information which shall lead to conviction."[108]

The Second Circuit interpreted the penalty section as making an informer's right to one-half of the fine contingent upon the successful prosecution of a criminal action by the Department of Justice.[109] This refusal to permit a private citizen acting on behalf of the public to

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103 A *qui tam* action is "an action brought by an informer, under a statute which establishes a penalty for the commission or omission of a certain act, and provides that the same shall be recoverable in a civil action, part of the penalty to go to any person who will bring such action and the remainder to the state or some other institution." BLACK'S LAW DICTIONARY 1414 (4th ed. 1968). *Qui tam* is an abbreviation of "qui tam pro domino rege quam pro se ipso in hac parte sequitur"—"who as well for the king as for himself sues in this matter." Jacklovich v. Interlake, Inc., 458 F.2d 923, n.1 (7th Cir. 1972).

104 33 U.S.C. § 401 *et seq.* (1970). This Act is more commonly called the Refuse Act. It was enacted because the Supreme Court, in *Willamette Iron Bridge Co. v. Hatch*, 125 U.S. 1 (1887), said that there was no federal common law prohibiting the obstruction of navigable waters.

105 Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections 407, 408, and 409 of this title shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 nor less than $500, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court.

Refuse Act § 16, 33 U.S.C. § 411 (1970).

106 It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matters of any kind or description whatever . . . into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water.

Refuse Act § 13, 33 U.S.C. § 407 (1970).

107 *And provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful.

Refuse Act § 13, 33 U.S.C. § 407 (1970).

108 Refuse Act § 16, 33 U.S.C. § 411 (1970).

109 Another court has stated that an informer's right to a share of the fine is dependent upon:

a. criminal proceedings having been instituted under § 411 by the Department of Justice,
b. a conviction having been obtained,
c. a fine having been imposed as a penalty.

Bass Anglers Sportsman Soc. v. Scholze Tannery, Inc., 329 F. Supp. 339, 345 (E.D. Tenn. 1971).

initiate a civil *qui tam* suit is consistent with the rulings of other federal courts.[110] The uniformity of holdings is attributable to the fact that the right to bring a civil suit in *qui tam*[111] is purely statutory[112] and a forfeiture under the Refuse Act can be imposed only in a criminal proceeding since the Act is a criminal statute.[113]

The current tidal wave of citizen suits[114] seeking to utilize this

110 In all of the following cases brought under the Refuse Act, the plaintiff was not allowed to bring a *qui tam* action: Jacklovich v. Interlake, Inc., 458 F.2d 923 (7th Cir. 1972); Bass Anglers Sportsman Soc., Inc. v. Koppers Co., 447 F.2d 1304 (5th Cir. 1971); Gerbing v. I.T.T. Rayonier, Inc., 332 F. Supp. 309 (M.D. Fla. 1971); Mitchell v. Tenneco Chemicals, Inc., 331 F. Supp. 1031 (D. S.C. 1971); Lavagnino v. Porto-Mix Concrete, Inc., 330 F. Supp. 323 (D. Colo. 1971); Bass Anglers Sportsman's Soc. v. Scholze Tannery, Inc., 329 F. Supp. 339 (E.D. Tenn. 1971); United States *ex rel.* Mattson v. Northwest Paper Co., 327 F. Supp. 87 (D. Minn. 1971); Enquist v. Quaker Oats Co., 327 F. Supp. 347 (D. Neb. 1971); Matthews v. Florida-Vanderbilt Develop. Corp., 326 F. Supp. 289 (S.D. Fla. 1971); Durning v. I.T.T. Rayonier, Inc., 325 F. Supp. 446 (W.D. Wash. 1970); Bass Anglers Sportsman's Soc. v. United States Plywood-Champion Papers, Inc., 324 F. Supp. 302 (S.D. Tex. 1971); Bass Angler Sportsman Soc. v. United States Steel Corp., 324 F. Supp. 412 (N.D. Ala. 1971), *aff'd* on opinion below, 447 F.2d 304 (5th Cir. 1971) (per curiam); Reuss v. Moss-American, Inc., 323 F. Supp. 848 (E.D. Wis. 1971).

111 *Qui tam* actions have long been permitted by federal courts. "Statutes providing for actions by a common informer . . . have been in existence . . . in this country ever since the foundation of our Government." Marvin v. Trout, 199 U.S. 212, 225 (1905). The Second Circuit, itself, has recognized *qui tam* actions. United States *ex rel.* Pressprich & Son Co. v. James W. Elwell & Co., 250 F. 939 (2d Cir.), *cert. denied*, 248 U.S. 564 (1910).

112 There is no common law basis on which a *qui tam* action might be predicated. "It is settled law that an informer can in no case sue in his own name to recover a forfeiture, given in part to him, unless the right to sue is accorded by the statute raising the forfeiture." Drew v. Hilliker, 56 Vt. 641, 645 (1884).

In United States *ex rel.* Marcus v. Hess, 317 U.S. 537 (1943), the Supreme Court stated that: "[s]tatutes providing for a reward to informers which do not specifically either authorize or forbid the informer to institute the action are construed to authorize him to sue." *Id.* at 541 n.4, *citing* Adams v. Woods, 6 U.S. (2 Cranch) 336 (1805). For a criticism of this statement as dictum see Comment, *The Refuse Act of 1899: Its Scope and Role in Control of Water Pollution*, 58 CALIF. L. REV. 1444, 1460 (1970). However, *Marcus* is cited in *Qui Tam Actions and the 1899 Refuse Act: Citizens Lawsuits Against Polluters of Nation's Waterways*, COMMITTEE PRINT OF THE CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE ON GOVERNMENT OPERATIONS, H.R., 91st Cong., 2d Sess., Sept. 1970, p. 4-5 [hereinafter H.R. SUBCOMMITTEE REPORT] in support of the proposition that the Refuse Act authorizes a private citizen's institution of a *qui tam* suit.

113 The terminology of the Refuse Act emphasizes its criminal nature. 33 U.S.C. § 413 states: "The Department of Justice shall conduct the legal proceedings necessary to enforce the provisions of sections . . . 407 . . . 411 . . . of this title." § 411 uses the following expressions: "violate", "aid", "abet", "guilty", "misdemeanor", "conviction", "punished", "fine", and "imprisonment". Since this statute is basically a criminal one, it cannot be enforced by civil proceedings. United States v. Claflin, 97 U.S. 546 (1878).

114 *See* note 110 *supra*. *See also* Note, *The Refuse Act of 1899: New Tasks for an Old Law*, 22 HASTINGS L.J. 782 (1972).

The recent initiation of *qui tam* suits to enforce the Refuse Act is largely a result of the H.R. SUBCOMMITTEE REPORT, *supra* note 112. In fact, Rep. Henry R. Reuss, chairman of the Subcommittee, was the plaintiff in Reuss v. Moss-American Inc., 323 F. Supp. 848 (E.D. Wis. 1971). In that case, Congressman Reuss sought, unsuccessfully, to establish his right to bring a *qui tam* action. But he was later successful in collecting one-half of the fine from a governmental prosecution based on the Refuse Act. United States v. St. Regis Paper Co., 328 F. Supp. 660 (W.D. Wis. 1971).

Informer's fees have also been awarded in five other cases: United States v. Anaconda

nineteenth century statute to abate water pollution is a result of the environmental standing problem[115] and of what environmentalists see as lackadaisical government enforcement[116] of the Refuse Act. The federal government would prefer to proceed under the Federal Water Pollution Control Act[117] and dislikes "private attorney-generals"[118] in-

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Wire and Cable Co., 4 E.R.C. 1135 (S.D.N.Y., May 22, 1972) (*See* Bird, "Bounty for the Accuser," N.Y. Times, Aug. 6, 1972, § 4, at 5, col. 4. The Hudson River Fishermen's Association was awarded $20,000 for the information that it provided in the prosecution of this case. Federal District Judge Thomas F. Croake praised the Association for "persistently challeng[ing] the bureaucratic inertia which characteristically prevents effective governmental action on controversial matters." N.Y. Times, Sept. 5, 1972, at 23, col. 1.); United States v. Pennsylvania Industrial Chemical Corp., No. 71-75 Crim. (W.D. Pa., July 30, 1971); United States v. Transit-Mix Concrete Corp., 2 E.R.C. 1074 (S.D.N.Y., Dec. 11, 1970); United States v. Louisville and Nashville R.R., No. 9188 (W.D. Tenn., Nov. 23, 1970); United States v. Penn Central R.R., No. 69 Cr. 607 (S.D.N.Y., July 30, 1970).

115 *See* note 100 *supra*. However, the Second Circuit held that the *Data Processing* standing criteria did not apply to *Connecticut Action Now, Inc.* because plaintiffs were not seeking review of an official action but were suing a private company. The court never reached the question of what standing criteria *are* appropriate under the Refuse Act. *See* text accompanying note 125 *infra*.

H.R. 8355, 92nd Cong., 1st Sess. (1971) introduced by Congressmen Harrington and Koch would have alleviated the standing problem under the Refuse Act. They have suggested that if an informer provides information regarding a violation and the United States Attorney takes no action on it within sixty days, then the informer would be authorized to bring a private *qui tam* action. The bill would also have increased the fine from a $500 to $10,000 minimum and from a $2,500 to $25,000 maximum. It is not known whether this bill will be considered by the 93rd Congress.

The New York City noise control code, N.Y.C. AD. CODE ch. 57, art. VIII, § 1403.3-8.09 (1972), *as cited in* City Record, Oct. 16, 1972, at 3982, col. 2, is a reflection of the new interest in *qui tam* actions. It grants citizens standing and much broader rights than those allowed under the Refuse Act. Under § 8.09, if the Environmental Control Board fails to act within thirty days after a citizen has filed a complaint, the citizen may sue the polluter himself. He may collect up to 50 percent of the penalty fines collected in such an action and up to 25 percent of the fines collected if he provides information leading to the Board's imposition of a civil penalty.

116 Historically, *qui tam* actions were brought when there was an inefficient police force or when there was a "lack of confidence in the Crown's intentions to enforce criminal statutes." H.R. SUBCOMMITTEE REPORT, at 2. Similarly citizen groups today have little faith in the U.S. Attorney's prosecutorial efforts.

In 1970, the House Committee on Government Operations recommended that "the Corps of Engineers . . . vigorously enforce the Refuse Act." *House Comm. on Gov't Operations, Our Waters and Wetlands: How the Corps of Engineers Can Help Prevent Their Destruction and Pollution*, H.R. REP. No. 91-917, 91st Cong., 2d Sess. 17-18 (1970). Yet, in August of 1970, there were only 266 Refuse Act permits in force, leaving the vast majority of the forty thousand industrial plants in the United States in violation of the Act. Druley, *The Refuse Act of 1899*, (Monographs) ENV. REP., No. 11 at 6 (Jan. 28, 1972).

However, the government claims it is increasing the number of prosecutions. In the first eight months of 1970, the United States brought 170 criminal actions based on the Refuse Act, a 300 percent increase over the previous year. Note, *The Refuse Act, Its Role Within the Scheme of Federal Water Quality Legislation*, 46 N.Y.U.L. REV. 304, 307 (1971).

117 33 U.S.C. § 1151 *et seq.* (1970) [hereinafter FWPCA]. The FWPCA does not supersede the Refuse Act. 33 U.S.C. § 1174 specifically states, "[T]his chapter shall not be construed as . . . affecting or impairing the provisions of sections 407, 408, 409 and 411 to 413 of this title." *See* United States v. United States Steel Corp., 328 F. Supp. 354 (N.D. Ind. 1970).

But the Department of Justice issues Guidelines for Litigation under the Refuse Act

terfering with its own anti-pollution program.[119] The Second Circuit apparently recognized this governmental concern when it found that citizen suits based on the Refuse Act would be "highly disruptive"[120] and that "central control over enforcement [of the Act should] be lodged in one agency of the Government."[121]

However, there have been successful citizen suits, not related to *qui tam* actions, based on the Refuse Act. Individuals have sued in tort, their success being dependent on whether their damages were the result of pollution or obstruction to navigation.[122] The Refuse Act was enacted primarily to prevent obstruction to navigation[123] and its use

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stressing its use for accidental or infrequent discharges, leaving continuing violations to be handled under the FWPCA. 1 (Current Developments) ENV. REP. 288 (July 17, 1970). In the following categories, United States Attorneys must have permission from the Land and Natural Resources Division of the Justice Department to initiate an action under the Refuse Act:

a. where industry is complying with state or federal programs,
b. where industry is spending money on pollution abatement in accordance with a program of the Federal Water Quality Administration,
c. where a state government has brought suit to enjoin the same discharges.

1 (Current Developments) ENV. REP. 157-58 (June 12, 1970).

See Druley, *The Refuse Act of 1899*, (Monographs) ENV. REP., No. 11 at 6 (Jan. 28, 1972); Rodgers, *Industrial Water Pollution and the Refuse Act: A Second Chance for Water Quality*, 119 U. PA. L. REV. 761, 792-806 (1971).

The Justice Department would prefer not to bring Refuse Act prosecutions against companies who are working with the government on pollution abatement.

118 Associated Industries of New York State v. Ickes, 134 F.2d 694, 704 (2d Cir. 1943).

119 Governmental opinion on the role of private citizens using the bounty system to aid in pollution control is much debated. Henry L. Diamond, New York State's Commissioner of Environmental Conservation feels that rewards "are a good dramatic example once in a while but they are not a basic pollution control tool because you have to have regular systematic surveillance." Bird, "Bounty for the Accuser," N.Y. Times, Aug. 6, 1972, § 4, at 5, col. 8.

Robert A. Morse, U.S. Attorney for the Eastern District of New York would agree. Pollution control "has to be done on an institutionalized, organized basis — it can't be a hit-and-miss faddist effort." N.Y. Times, Sept. 5, 1972, at 23, col. 1.

However, Whitney North Seymour, U.S. Attorney for the Southern District of New York feels that "[i]f everyone using the out-of-doors were to serve as a special pollution watchdog we could work miracles in securing universal enforcement of pollution laws." *Id.*

120 457 F.2d at 88.

121 *Id.* at 90.

122 Some cases have held that there is no private right to sue for money damages unless the damage incurred is related to navigation. Christiansen & Sons v. City of Duluth, 154 F.2d 205 (8th Cir. 1946); Lavagnino v. Porto-Mix Concrete, Inc., 330 F. Supp. 323 (D. Colo. 1971) (plaintiff sued in *qui tam* as well); Guthrie v. Alabama By-Products Co., 328 F. Supp. 1140 (N.D. Ala. 1971). In the following cases, plaintiffs were allowed to sue under the Refuse Act when their damages resulted from an obstruction to navigation: Alameda Conservation Ass'n. v. California, 437 F.2d 1087 (9th Cir.), *cert. denied*, 402 U.S. 908 (1971); Sierra Club v. Leslie Salt, 4 E.R.C. 1663 (N.D. Cal., Oct. 13, 1972); Hawkinson v. Blandin Paper Co., 4 E.R.C. 1009 (D. Minn., April 14, 1972); Lauritzen v. Chesapeake Bay Bridge & Tunnel Dist., 259 F. Supp. 633 (E.D. Va. 1966).

123 *See* Wyandotte Co. v. United States, 389 U.S. 191 (1967); Chambers-Liberty Counties Navigation Dist. v. Parker Brothers & Co., 263 F. Supp. 602 (S.D. Tex. 1967).

in civil suits has largely been restricted to that type of damage although in criminal cases, it has been construed as prohibiting pollution as well.[124] In *Connecticut Action Now*, the Second Circuit did not decide whether this old distinction is still applicable to civil cases nor did it even reach the question whether a private citizen has a right to sue at all under the Refuse Act.[125] Even if a right to sue for damages were recognized where the claim is one of pollution rather than obstruction, this would not achieve the goal of environmental plaintiffs which is to enjoin the discharge of pollutants.[126]

An indirect way of achieving this goal has been found by some concerned citizens and environmental groups who have challenged the permit program of the Army Corps of Engineers which is carried out under authorization of the Refuse Act. Standing to seek review of permits granted has been recognized by the Second Circuit[127] and other federal courts[128] even though the Refuse Act itself is silent regarding judicial review. Recent district court decisions have joined consideration of the Refuse Act with the new National Environmental Policy Act of 1969 and said that a Refuse Act permit cannot be issued unless the Army Corps of Engineers first prepares an NEPA impact statement.[129] At least one general principle can be derived from a survey of

124 *See* United States v. Standard Oil Co., 384 U.S. 224 (1966); United States v. Esso Standard Oil Co., 375 F.2d 621 (3rd Cir. 1967); United States v. Ballard Oil Co., 195 F.2d 369 (2d Cir. 1952); United States v. United States Steel Corp. 328 F. Supp. 354 (N.D. Ind. 1970).

125 457 F.2d at 89. On the latter question, the court noted: "Whether a private claimant specifically injured by a violation of § 407 — a riparian owner, for instance — can sue for an injunction or damages is an issue not now before us, and we do not reach it." 457 F.2d at 90 n.16. The court's footnote went on to cite and discuss a case holding strongly against such a right. Thus, one might infer that the Second Circuit (or at least this 3-judge circuit panel) would not look favorably on such a suit.

126 The federal government may seek an injunction under the Refuse Act. Wyandotte Co. v. United States, 389 U.S. 191 (1967); United States v. Republic Steel Corp., 362 U.S. 482 (1960).

In Vermont v. New York & International Paper Co., No. 50 Orig. (U.S. Sup. Ct., Master's Order No. 1, Nov. 1, 1972) plaintiff, the state of Vermont, moved for leave to file an amended complaint seeking an injunction based on § 13 of the Refuse Act. (The original complaint is based on the common law theory of nuisance). On November 1, 1972, a Special Master appointed to review the case by the Supreme Court denied leave to amend, subject to review by the Court. The order issued by the Master found that Vermont has no standing to seek direct enforcement of the Refuse Act. *Connecticut Action, Now, Inc. v. Roberts Plating Co., Inc.* was cited as the basis for the Master's opinion.

127 *See* Citizens Committee for Hudson Valley v. Volpe, 302 F. Supp. 1083 (S.D.N.Y. 1969), *aff'd* 425 F.2d 97 (2d Cir.), *cert. denied*, 400 U.S. 949 (1970).

128 Petterson v. Resor, 331 F. Supp. 1302 (D. Ore. 1971), Delaware v. Pennsylvania N.Y. Central Transp. Co., 323 F. Supp. 487 (D. Del. 1971). Under these rulings a citizen can ask for judicial review of an Army permit granted under § 13 of the Refuse Act.

But see Citizens Committee v. Resor, 2 E.R.C. 1683 (D. Ore., Feb. 16, 1971) where the court held that, since the plaintiff group claimed no personal damages, it did not have standing to sue.

129 *See* Citizens for Clean Air v. Corps of Engineers, 4 E.R.C. 1456 (S.D.N.Y., Aug. 14,

the gains and losses of environmentalists who have sought to enforce the Refuse Act: even a citizen who has been directly injured by an instance of pollution must frame his complaint within the ambit of a statute that permits a judicial remedy to be afforded in a private action. While the Refuse Act, with its outright prohibition against unauthorized discharges, appears to provide an excellent method of dealing with polluters, the efficacy of the act ultimately depends upon the government's zeal in prosecuting violators.[130] Where, for one reason or another, enforcement has been lax, there is presently no satisfactory way in which individuals can force action against the polluter, notwithstanding the existence of the bounty provision in the statute.[131] As courts have been unanimous in disallowing *qui tam* actions under the Refuse Act, authority for such actions, if forthcoming at all, will have to come explicitly from Congress.

1972); Sierra Club v. Sargent, 3 E.R.C. 1905 (W.D. Wash., March 16, 1972) and Kalur v. Resor, 335 F. Supp. 1 (D.D.C. 1971).

These decisions have resulted in proposed bill H.R. 14103 which would amend the National Environmental Policy Act to allow the Army Corps of Engineers to give permits without the filing of an environmental impact statement. The Engineers complain of delay saying that the preparation of a statement would take one-half of a man-year even for such a relatively simple installation as a sewage treatment plant. 2 (Current Developments) ENV. REP. 301 (July 7, 1972).

130 This is true although it has apparently been established that individuals may utilize provisions of the Act in bringing private actions for tort damages. *See* notes 122-26 and accompanying text *supra*.

131 Although it has been recognized that citizens may seek review of permits granted by the Army Corps of Engineers (*see* notes 127-29 and accompanying text *supra*), the value of recognizing such a right is highly questionable in light of the fact that most industrial plants do not bother to obtain the permits. *See* note 116 *supra*.