

# Environmental Law

by Travis M. Trimble\*

In 2004 courts in the Eleventh Circuit addressed several Clean Water Act<sup>1</sup> issues. The Eleventh Circuit Court of Appeals arguably expanded the scope of the injuries a plaintiff may allege to have standing to sue under the Clean Water Act. The court held that the federal court had jurisdiction over a Clean Water Act citizen suit alleging violations of a permit issued by the State of Georgia under its permitting program authorized under the Act.<sup>2</sup> The Eleventh Circuit also addressed whether a Florida state regulation effectively revised or added to the state's Clean Water Act, which mandated water quality standards, necessitating a formal Environmental Protection Agency ("EPA") review and approval of the regulation.<sup>3</sup> In an appeal from the Eleventh Circuit, the United States Supreme Court held that a pump, which moves contaminated water from one water body to another but does not itself add pollutants to the water, is nevertheless a point source for purposes of the Act.<sup>4</sup> Finally, the United States District Court for the Northern District of Georgia held that the Corps of Engineers was not required to produce an Environmental Impact Statement ("EIS") for the issuance of a Section 404<sup>5</sup> permit for the construction of one of many pending reservoir projects in north Georgia.<sup>6</sup>

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1. 33 U.S.C. § 1251 (2000).
2. *Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993 (11th Cir. 2004).
3. *Fla. Pub. Interest Research Group Citizen Lobby, Inc. v. EPA*, 386 F.3d 1070, 1073 (11th Cir. 2004).
4. *S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe*, 541 U.S. 95 (2004).
5. Clean Water Act, 33 U.S.C. § 1344 (2000).
6. *Ga. River Network v. United States Army Corps of Eng'rs*, 334 F. Supp. 2d 1329 (N.D. Ga. 2004).

In addition, the Eleventh Circuit directed the EPA to determine whether, under Georgia's state-implemented Clean Air Act<sup>7</sup> permit program, a power company could be denied a pre-construction permit for a new major stationary source of air pollutants because it was a part-owner of an existing noncompliant major stationary source.<sup>8</sup> Finally, the Eleventh Circuit, under the Wilderness Act<sup>9</sup> and the National Environmental Policy Act ("NEPA"),<sup>10</sup> addressed the National Park Service's use of vehicles to transport tourists on a road that runs through the Cumberland Island wilderness area.<sup>11</sup>

## I. CLEAN WATER ACT

### A. *Standing*

In *Parker v. Scrap Metal Processors, Inc.*,<sup>12</sup> the Eleventh Circuit held, among other things,<sup>13</sup> that plaintiffs had standing to sue under the Clean Water Act<sup>14</sup> ("CWA") when plaintiffs alleged that defendants, who owned and operated a scrap metal recycling business adjacent to plaintiffs' property, allowed contaminated storm water to migrate onto plaintiffs' property.<sup>15</sup> Plaintiffs also had standing when plaintiffs alleged that defendants allowed contaminated storm water to migrate into a stream that was not on plaintiffs' property even though plaintiffs did not allege any harm to them resulting from that contamination.<sup>16</sup> The court also held that it had subject matter jurisdiction over plaintiffs' CWA claims despite the fact that the claims alleged violations of the National Pollutant Discharge Elimination System ("NPDES") permit conditions, which were administered by the State of Georgia under its

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7. 42 U.S.C. § 7401 (2000).

8. *Sierra Club v. Leavitt*, 368 F.3d 1300 (11th Cir. 2004).

9. 16 U.S.C. § 1131 (2000).

10. 42 U.S.C. § 4321 (2000).

11. *Wilderness Watch v. Mainella*, 375 F.3d 1085, 1087 (11th Cir. 2004).

12. 386 F.3d 993 (11th Cir. 2004).

13. Plaintiffs filed suit in the Northern District of Georgia, asserting violations of the CWA and the Resource Conservation and Recovery Act ("RCRA") as well as claims for contribution under the Georgia Hazardous Site Response Act, O.C.G.A. section 12-8-90, negligence, nuisance, and trespass. The jury found defendants liable under all theories and awarded plaintiffs \$1.5 million in damages, which the court reduced to \$1 million. Defendants appealed on numerous grounds. *Parker*, 386 F.3d at 1002.

14. 33 U.S.C. § 1251 (2000).

15. *Parker*, 386 F.3d at 1003-04.

16. *Id.*































