



Judge Alito's Nomination Threatens Safeguards for the Environment and Public Health

Judge Samuel A. Alito Jr.'s record indicates that his nomination to a lifetime seat on the Supreme Court endangers laws that Americans rely upon, including fundamental safeguards for public health and the environment. Judge Alito has voted to overturn the Environmental Protection Agency's actions on behalf of polluters, but never on behalf of ordinary Americans. He provided the decisive vote in favor of challenges to EPA's actions by companies that had violated the Safe Drinking Water Act and Clean Water Act. In these cases, the dissenting judge stressed that a narrow standard of review counseled deference to the decisions that Judge Alito voted to overturn.

Judge Alito rejected the EPA's emergency cleanup order to protect drinking water. In a very troubling environmental case, Judge Alito provided the decisive vote to overturn the EPA's *emergency* cleanup order under the Safe Drinking Water Act (SDWA). In *W.R. Grace v. EPA*,¹ the local water board and state and federal environmental officials collaborated with a polluting fertilizer plant and abandoned a toxic waste site to develop a health-based plan for removing toxic pollution from the drinking water supply for 180,000 people in Lansing, Michigan. The polluter – W.R. Grace – sued to block the recommendations of the collaborative effort, known as the Saginaw Aquifer Technical Evaluation Team (SATET).

Judge Alito and a colleague ruled in favor of W.R. Grace. This decision blocked both the health standard for safe ammonia cleanup and the preferred technology to remove excess ammonia from the drinking water supply. Judge Alito objected to consideration of evidence that the public would not accept an alternative that allowed pollution of the drinking water system: "The inference is that the Lansing [Water] Board's staff pushed SATET not to recommend a blending process under Approach 2 because blending would allow some contaminants to enter the drinking water system."²

The late-Judge Carol Los Mansmann vigorously dissented, and reminded Judge Alito that "Courts should not undermine the will of Congress by withholding relief." She stressed that "the high degree of deference we are to accord the EPA is a cornerstone to the EPA's power, enshrined in the Safe Drinking Water Act, 'to protect the public, health, the environment, and public water supplies from the pernicious effects of toxic wastes.'"³ Judge Mansmann quoted from a prior decision that Judge Alito wrote: "I am particularly mindful that we are a reviewing court, experts in the law, and not expert environmental toxicologists examining data ab initio [from the beginning]. . . . 'A reviewing court 'must generally be at its most deferential' when reviewing factual determinations within an agency's area of special expertise.'"⁴ Judge Alito ignored his own prior views to prevent the EPA from cleaning up Lansing's drinking water.

Judge Alito joined another majority opinion that blocked the EPA's efforts to enforce the Clean Water Act. Judge Alito provided the decisive vote to overturn a district court's rejection of an industry challenge to an \$8 million fine levied on a steel plant found guilty of violating the Clean Water Act. In dissent, Judge Julio Fuentes concluded that "the central issue here is whether the District Court abused its discretion in crediting one expert over another when it determined the interest rate [for calculating the fine]. We have noted many times that abuse of discretion is a highly deferential standard of review. . . Still the majority conducts a protracted survey of economic theories, considers treatises not specifically presented by experts before the District Court, and decides that it disagrees with the District Court's discretionary determination."⁵

¹ 261 F.3d 330 (3d Cir. 2001).

² *W.R. Grace* at 343.

³ *Id.* at 345.

⁴ *Id.* ([quoting *Southwestern Pennsylvania Growth Alliance v. Browner*, 121 F.3d 106, 117 \(3rd Cir. 1997\)](#)).

⁵ *Id.* at 190.