

Michael I. Krauthamer
Public Interest Research Group v. Magnesium Elektron, Inc.:
A Loophole in Citizen Suit Standing

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Abstract by Janet C. Goldberg

In *Public Interest Research Group v. Magnesium Elektron, Inc.: A Loophole in Citizen Suit Standing*, Michael Krauthamer examines the Third Circuit's denial of standing to a party bringing a citizen suit against a company that violated permits regarding maximum levels of chemical discharge pursuant to the Clean Water Act. In the district court, Magnesium Elektron stipulated to discharging excessive amounts of pollution, and the court found the company liable. At the appeals stage, however, the higher court found that since there was no measurable injury to the waterway into which the effluent flowed, there was no injury in fact, and hence, no standing.

Krauthamer argues that this finding renders citizen suit enforcement of environmental statutes effectively impossible until a violation of a statute is such that the environment is already damaged. The paradox presented is that despite citizen suit provisions and ample legislative history supporting the preventive nature of the Clean Water Act, preventive statutes may not be enforced through the use of citizen suits until damage takes place. While actual damage would satisfy the injury in fact test for Article III standing, Krauthamer suggests that evidence of violations of preventive environmental statutes should also satisfy the requirement due to the possibility of serious damage caused by the cumulative effect of many violations which, taken individually, are insignificant, but which taken together, would be injurious.

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