Fourth Circuit Court of Appeals Grants Standing to Citizen Group

*Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149 (4th Cir. 2000), one of the first cases to interpret *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 120 S. Ct. 693 (2000),1 broadens access to the courts for citizen groups suing under the Clean Water Act (CWA) by granting standing for threatened (but not actual) injuries.

Friends of the Earth (FOE) and the Citizens Local Environmental Action Network (CLEAN) brought suit against Gaston Copper Recycling Corporation (Gaston) under the CWA’s citizen suit provision for Gaston’s numerous violations of its effluent release permit.2 FOE and CLEAN asserted standing based on the injury suffered by two members who had reduced their use of a lake downstream from Gaston.3

The district court dismissed the suit on standing grounds, finding that the plaintiffs could only meet the “injury in fact” requirement by showing scientific proof of elevated pollution levels within the lake.4 The Fourth Circuit upheld the decision on appeal. After the Supreme Court issued its decision in *Laidlaw*, however, the Fourth Circuit reheard the case en banc and reversed the decision of the district court, granting standing to sue to one member of CLEAN and remanding for a determination of whether the other members had standing in light of *Laidlaw*. The court based its decision on two factors: the CWA’s citizen suit provision, which “confers standing on a ‘broad category of potential plaintiffs’ who ‘can claim some sort of injury,’ be it actual or threatened, economic or non-economic;” and the finding in *Laidlaw* that “citizen affidavits attesting to reduced use of a waterway out of reasonable fear and concern of pollution ‘adequately documented injury in fact.’”5

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2. *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 150 (4th Cir. 2000).
3. *Id.* at 151.
4. *Id.* at 159.
5. *Id.* at 155, 159.
Gaston is significant because it is an early and broad reading of Laidlaw's expansion of citizen suit standing. This case hopefully signals a retreat from the increasingly stringent standing requirements placed on citizens groups prior to Laidlaw. The Seventh, Ninth, and D.C. Circuit courts have already followed the lead of the Supreme Court and the Fourth Circuit.

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7. See, e.g., Krislov v. Rednour, 226 F.3d 851 (7th Cir. 2000); NRDC v. Southwest Marine, Inc., 236 F.3d 985 (9th Cir. 2000) (following Gaston, "plaintiff must merely show that a defendant discharges a pollutant that causes or contributes to the kinds of injuries alleged in the specific geographic area of concern"); Ecological Rights Found. v. Pac. Lumber Co., 230 F.3d 1141 (9th Cir. 2000); Am. Petroleum Inst. v. EPA, 216 F.3d 50 (D.C. Cir. 2000).