



Group Sues EPA Over Ocean Acidification

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By Jesse Greenspan

Law360, New York (May 15, 2009) -- A conservation group has taken a new tack in the drive to regulate greenhouse gas emissions, suing the U.S. Environmental Protection Agency for failing to protect Washington state's ocean waters from the threat of ocean acidification.

In a complaint filed Thursday, the Center for Biological Diversity alleged that Washington's oceans failed to meet water quality standards, but that the EPA arbitrarily and unlawfully approved the state's incomplete list of impaired waters.

Seawater becomes more acidic when it absorbs carbon dioxide emitted from power plants and other sources, impairing the ability of marine animals to develop protective shells and skeletons for survival, according to the group.

The world's oceans store about 50 times more carbon dioxide than the atmosphere does, it added.

"Ocean acidification is global warming's evil twin," said Miyoko Sakashita, an attorney with the Center for Biological Diversity's oceans program. "The EPA has a duty under the Clean Water Act to protect our nation's waters from pollution, and today, CO2 is one of the biggest threats to our ocean waters."

If the suit is successful, then Washington would have to come up with a plan to limit carbon dioxide emissions, she added.

"One of the key things that we've realized in looking at ocean acidification is that it's progressing so fast and it will fundamentally change our ocean ecosystems, so we need to take action now," Sakashita said.

Under the Clean Water Act, the acceptable pH change allowed is 0.2 units. But pH levels have declined more than that off the coast of Washington, according to the group, which cited a 2008 report in the Proceedings of the National Academy of Sciences.

In 2007, the group requested that Washington and about nine other coastal states include their ocean waters on lists of impaired waters that they are required to send to the EPA

every two years. Washington declined to do so, however, and the EPA approved its impaired waters list anyway, prompting the suit.

Though the deadline has passed, most of the other states have not yet submitted impaired waters lists to the EPA, according to Sakashita.

"Those actions will hopefully complement any actions that are taken under the Clean Air Act or any new bill to reduce carbon dioxide emissions," Sakashita said.

The EPA takes concerns regarding acidification of ocean and coastal waters very seriously, it said in a statement.

"Protection of the nation's water quality is among EPA's highest priorities," the agency said. "We will review the complaint carefully and respond in a timely fashion."

In a separate but related matter, the Center for Biological Diversity threatened to sue the EPA in November for failing to respond to its petition seeking heightened pH standards for water quality.

The Clean Water Act requires the EPA to update water quality standards to reflect current scientific knowledge, but the agency's 0.2 unit pH criterion, which has not changed since 1976, is "outdated and woefully inadequate," the group said.

That suit was never filed, however, because immediately after coming into office the Obama administration granted the group's petition.

Now, the EPA is soliciting research and data to address the impact of ocean acidification, as well as information on marine pH monitoring and the implementation of pH water quality standards.

The Center for Biological Diversity is represented in the suit by its own attorneys and by the Crag Law Center.

The case is Center for Biological Diversity v. EPA et al., in the U.S. District Court for the Western District of Washington. Case number was not immediately available.