

CHAPTER TEN

Environmental Standing in Citizen Enforcement Actions: *Laidlaw* and its Aftermath (pages 1041-1049)

As discussed in Note 6 on page 1048, some judges are restricting environmental standing in citizen suits by requiring far more detailed allegations of injury by plaintiffs than were required by the U.S. Supreme Court in its *Laidlaw* decision (pages 1041-1046). On June 28, 2021, the U.S. Court of Appeals for the Seventh Circuit dismissed on standing grounds an important citizen suit challenging pollution from coal ash ponds owned by a coal-fired powerplant. In *Prairie Rivers Network v. Dynergy Midwest Generation, LLC*, 2 F.4d 1002 (7th Cir. 2021), held that an environmental group had failed to make sufficient allegations of injury to establish associational standing. Even though the defendant power company had failed to challenge the group's standing in the district court, the 7th Circuit held that the group could not supplement its standing allegations when its standing was challenged on appeal.

The court explained: "In its complaint, PRN maintains it has more than 1000 members yet fails to show at least one who has individual standing. Although "[i]ndividual members of PRN live near, study, work, and recreate in and around the Middle Fork, including in the vicinity of the Vermilion Power Station," we do not know—based on the face of the complaint—who these members are or how exactly the alleged discharges will harm them individually. PRN speaks of its individual members only as a collective, claiming that Dynergy's alleged discharges have harmed, and will continue to harm, "[t]he individuals' use and enjoyment of the Middle Fork." But presuming that at least one of these individual members has standing to sue on their own, as PRN invites us to do under *Lujan*, trends too closely to the statistical probability theory of associational standing rejected in *Summers*" v. *Earth Island*. The court did state that its dismissal was without prejudice so a new lawsuit with more specific standing allegations could be filed on remand.