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INSIDE EPA
September 12, 1986

EPA MAY CHALLENGE EMPLOYEE RIGHT TO SUE IN NOVEL FLUORIDE CASE

EPA may challenge the recent move by the union representing EPA's professionals to join environmentalists in a suit over Safe Drinking Water Act health standards for fluoride, sources say, using the argument that the group has no "standing" to intervene because the workers are part of EPA itself. The National Federation of Federal Employees 2050 local has filed a friend-of-the-court brief supporting a lawsuit brought by the [Natural Resources Defense Council](#) seeking a vastly strengthened fluoride drinking water standard.

Charging that the professional reputations of the members are at stake, as well as public health, the union explains that the brief was filed after "a last resort" appeal in late August to agency chief Lee Thomas requesting a timely review of the rule by EPA's Science Advisory Board. Union sources grouse that Thomas's negative reply did not even take the form of a written response: "We deserve more than phone call from the 12th floor [upper EPA management]."

EPA must respond to a motion for the court to accept the brief by Sept. 12, sources say. Either EPA or the court may challenge the union on grounds of standing, attorneys explain, but note that court standards on the issue would likely "be more rigorous if [the union] were trying to intervene as a party rather than a friend-of-the-court." If such an attack is made, sources say, the union may counter that their standing is justified because the workers have an autonomous existence from EPA, and further are "serving a public purpose by airing their views" in the area of health concerns.

One attorney called the situation "unusual" in that - while there have been many cases in which an internal civil service group has filed suit over personal rights - "I know of no legal precedent for [an internal] group to challenge an agency over the functioning of its statutes or regs... Whether or not EPA will put them to the test [of standing] remains to be seen." The source added that "internal politics will have a lot to do with their response."

NFFE's motion to accept the brief argues that the court cannot reject the intervention for being filed too late in the proceeding, nor on the basis of prejudice: "Because it was not aware of the content of EPA's papers prior to their filing, NFFE could not have been expected to seek status as an amicus curiae at an earlier date." Nor can EPA claim prejudice because - as demonstrated by "the numerous letters and memoranda" attached to the brief - "the NFFE has consistently opposed the RMCL [recommended maximum contaminant levels that serve as drinking water goals] here in controversy as not supported by the scientific and technical literature, and has consistently made known to EPA its opposition." Finally, NFFE asserted that its members are "uniquely qualified to aid the court" on this matter.

[NRDC](#) filed suit last April alleging EPA's drinking water level for fluoride violates a requirement that RMCLs guard against "known or anticipated" adverse health effects. At the same time, the state of South Carolina entered into the legal battle - but from the opposite view, arguing that EPA acted "without substantial evidence of any adverse effect on health."

See also:

- [Natural Resources Defense Council Lawsuit Against EPA](#)
- [Natural Resources Defense Council Legal Brief \(2\)](#) (pdf file) - September 1986
- [Natural Resources Defense Council Legal Brief \(1\)](#) (pdf file) - April 1986
- [EPA Headquarters Union Amicus Brief](#) (pdf file) - September 1986

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