

## Sixth Circuit Rules that Clean Air Act Does Not Preempt State Tort Claims

Article By:

Daniel M. Krainin

Graham C. Zorn

---

In a decision that may leave facilities open to private tort liability despite compliance with federal Clean Air Act (CAA) requirements, the U.S. Court of Appeals for the Sixth Circuit concluded that the CAA does not preempt state tort claims. See [\*Merrick v. Diageo Americas Supply Inc.\*](#), Case No. 14-6198 (6th Cir. Nov. 2, 2015).

The Sixth Circuit held that the states' rights saving clause in the CAA "expressly preserves the state common law standards on which plaintiffs sue." *Id.* at 6. The court also noted that its conclusion was consistent with the CAA's legislative history, which "indicates that it was not Congress's purpose to preempt state common law claims." *Id.* at 8.

The Sixth Circuit's decision was consistent with those from similar cases in the Second and Third Circuits, but differed with the Fourth Circuit's ruling in *North Carolina ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291 (4th Cir. 2010). In that case, the Fourth Circuit held that the CAA preempts state common law claims. According to the Sixth Circuit here, the *North Carolina* decision is distinguishable because it involved claims brought under state common law in a state other than the state that was the source of the emissions. The Sixth Circuit also reasoned that its decision was not inconsistent with the Supreme Court's ruling in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011), in which the U.S. Supreme Court held that the CAA displaces federal common law. The Sixth Circuit noted "the Clean Air Act expressly reserves for the states—including state courts—the right to prescribe requirements more stringent than those set under the Clean Air Act . . . [whereas it] does not grant federal courts any similar authority." *Merrick* at 11.

© 2025 Beveridge & Diamond PC

---

National Law Review, Volume VI, Number 43

Source URL: <https://natlawreview.com/article/sixth-circuit-rules-clean-air-act-does-not-preempt-state-tort-claims>