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Hallstrom v. Tillamook County: Interpreting The Notice Provisions of Environmental Statutes

Karen P. Ryan

Notice requirements of citizen suit provisions in environmental statutes require that notice of an intention to bring a lawsuit for violation of an environmental statute be given at least sixty days prior to the filing of an action. Notice of such an intention must be given to the Environmental Protection Agency, the state in which the violation occurred, and the alleged violator. In Hallstrom v. Tillamook County, the Supreme Court held that the notice requirements for citizen suit provisions of environmental statutes must be strictly interpreted. According to the author, this decision exalts form over substance and does nothing to further the purpose of providing for citizen suits. This Note examines the Hallstrom decision and purposes behind notice provisions. The author concludes that these provisions should be pragmatically interpreted, providing courts with the discretion to modify or waive the notice requirements for a citizen suit depending on the individual circumstances of an individual case.

I. Introduction

In *Hallstrom v. Tillamook County*,[1] the United States Supreme Court established that the notice requirements for citizen suits, brought under federal environmental statutes, require strict compliance.[2] Failure to provide notice can result in the dismissal of an action. The *Hallstrom* decision treats

1. 110 S. Ct. 304 (1989).
2. *Id.*

notice provisions of environmental statutes as inflexible jurisdictional barriers and overlooks Congress' stated purpose of encouraging citizen enforcement of environmental statutes. The decision deprives courts of the discretion to expedite proceedings, while providing polluters with the defense of a jurisdictional objection.

Hallstrom presented the Court with the issue of whether the sixty-day notice requirement for a citizen suit filed under section 7002 of the Resource Conservation and Recovery Act[3] (RCRA) is jurisdictional or pragmatic.[4] A jurisdictional interpretation of the notice provision requires that the action be dismissed for failure to comply. A pragmatic interpretation allows the notice provision to be subject to waiver, equitable modification, and cure. In *Hallstrom*, the Court adopted a jurisdictional approach finding that the citizen-plaintiff's failure to comply with the sixty-day notice requirement deprived the district court of jurisdiction to hear the case.[5]

Section II of this Note explores the issue of strict compliance with the notice provisions of federal environmental statutes. It includes an examination of the applicable provisions of RCRA, and a description of the two approaches for interpreting the notice provisions in similar federal environmental statutes. Section III provides an explanation and analysis of the facts and holdings in *Hallstrom*. Section IV concludes that the notice requirements of RCRA and similar environmental statutes should be interpreted pragmatically, subject to waiver, equitable modification, and cure.

II. Background

A. *RCRA's Notice Requirements*

The subsections of the notice requirements of section 7002 of RCRA provide, in relevant part:

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3. 42 U.S.C. § 6972 (1988).

4. *Hallstrom*, 110 S. Ct. 304, 306 (1989). On appeal, the United States Supreme Court framed the issue as whether compliance with the sixty-day notice provision is a mandatory precondition to suit or whether it can be disregarded by the district court at its discretion. *Id.*

5. *Id.*

§ 6972. Citizens' suits

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

> (1)(A) against any person . . . who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or
>
> (B) against any person . . . who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to the health or the environment; or

. . . .

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred. . . . The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit . . . .

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

> (A) prior to 60 days after the plaintiff has given notice of the violation to—
>
> (i) the Administrator;
>
> (ii) the State in which the alleged violation occurs; and
>
> (iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,
>
> except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or
>
> (B) if the Administrator or State has commenced and is diligently prosecuting a civil or crimi-

> nal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.[6]

RCRA's notice provision is substantially similar to the citizen-suit notice provisions in other federal environmental statutes.[7] Subsection (a) provides for the enforcement of RCRA violations by citizens and expressly grants district courts subject matter jurisdiction over such actions.[8] In order to establish jurisdiction over a citizen suit in the district court, the citizen-plaintiff must make a good faith allegation of a continuous or intermittent violation.[9]

Subsection (b)(1) requires the citizen-plaintiff to give notice of the alleged RCRA violation to the EPA Administrator, the state, and the alleged violators sixty days before commencing the action.[10] This means that once a citizen has notified the necessary parties, sixty days must lapse before the action can begin. Through the 1984 amendments to RCRA, Congress established that an action may commence immediately after notification has been given to the violator when the violation concerns RCRA hazardous waste management

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6. 42 U.S.C. § 6972 (1988).

7. *Hallstrom*, 110 S. Ct. at 307. *See, e.g.*, Federal Water Pollution Control Act § 505 (a), (b), 33 U.S.C. § 1365(a), (b) (1988); Clean Air Act § 304 (a), (b), 42 U.S.C. § 7604(a), (b) (1988); Marine Protection, Research, and Sanctuaries Act of 1972 § 105 (g)(1), (2), 33 U.S.C. § 1415(g)(1), (2) (1988); Noise Control Act of 1972 § 12 (a), (b), 42 U.S.C. § 4911(a), (b) (1988); Deepwater Port Act of 1974 § 16 (a), (b), 33 U.S.C. § 1515 (a), (b) (1988); Safe Drinking Water Act § 1449 (a), (b), 42 U.S.C. § 300j-8(a), (b) (1988); Surface Mining Control and Reclamation Act of 1977 § 520 (a), (b), 30 U.S.C. § 1270(a), (b) (1988); Toxic Substances Control Act § 20 (a), (b), 15 U.S.C. § 2619(a), (b) (1988); Comprehensive Environmental Response, Compensation, and Liability Act § 310 (a)-(d), 42 U.S.C. § 9659(a)-(d) (1988); Endangered Species Act of 1973 § 11(g) (1), (2), 16 U.S.C. § 1540(g)(1), (2) (1988); Outer Continental Shelf Lands Act § 23(a)(1), (2), 43 U.S.C. § 1349(a)(1), (2) (1988); Act to Prevent Pollution from Ships § 11 (a), (b), 33 U.S.C. § 1910(a), (b) (1988); Consumer Product Safety Act § 24, 15 U.S.C. § 2073 (1988).

8. 42 U.S.C. § 6972(a) (1988).

9. Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 64 (1987) (discussing the citizen suit provision of section 505 of the Clean Water Act, 33 U.S.C. § 1365 (1988)).

10. 42 U.S.C. § 6972(b) (1988).

standards.[11]

Notice to a violator provides the violator with an opportunity to comply with the statute before legal action is taken against him.[12] Notice to the Administrator and the state is designed to trigger government action in resolving the matter.[13]

Congress has provided for citizen suits to assist the government in the enforcement of environmental statutes. As part of a congressional debate over citizen suits, Senator Muskie stated:

> Citizens in bringing such actions are performing a public service. The limited resources of many State enforcement agencies, bearing the first line of responsibility under this bill, will be fully extended. [The citizen suit] provision, requiring . . . notice to State and Federal agencies, in which they may initiate abatement proceedings, will allow many violations to come to their attention which might otherwise escape notice.[14]

Citizen suits are barred if the government has commenced, and is diligently prosecuting, an action in court to compel the violator to comply.[15] When the government receives notice of a violation of an environmental statute, it may bring an action, but it is not compelled to do so.[16] Senator Muskie also remarked, "[B]efore any citizen can bring an ac-

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11. Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, § 401, 98 Stat. 3221, 3270 (1984) (codified as amended at 42 U.S.C. § 6972(b) (1988)).

12. Hallstrom v. Tillamook County, 110 S. Ct. 304, 310 (1989).

13. Hallstrom v. Tillamook County, 844 F.2d 598, 601 (9th Cir. 1987), *aff'd*, 110 S. Ct. 304, 311 (1989). The Senate Committee Report on the Clean Air Act stated, "In order to further encourage and provide for agency enforcement, the Committee has added a requirement that prior to filing a petition with the court, a citizen . . . would first have to serve notice of intent to file such action on the Federal and State air pollution control agency and the alleged polluter." SENATE COMM. REPORT ON THE CLEAN AIR ACT, S. REP. No. 1196, 91st Cong., 2d Sess. 37 (1970).

14. 116 CONG. REC. S33,103 (daily ed. Sept. 22, 1970) (memorandum by Sen. Muskie).

15. 42 U.S.C. § 6972(b)(2) (1988).

16. 42 U.S.C. § 6928(a)(1) (1988). *See* Hallstrom v. Tillamook County, 110 S. Ct. 304, 311 (1989).

tion, he is required to notify the enforcement agency concerned of his intent. . . . [T]he idea is to use citizens to trigger the enforcement mechanism. If that enforcement mechanism does not respond, then the citizen has [the] right to go to court."[17] Though Congress intended the notice requirements to trigger government action, they were not meant to discourage citizen suits. Notice requirements serve to provide the government and the violator with the information necessary to give a clear indication of the citizen's intent.

B. *Two Approaches for Interpreting Notice Requirements for Citizen Suits*

Eight circuit courts have addressed the issue of whether the citizen suit notice requirements in federal environmental statutes require jurisdictional or pragmatical interpretation. The circuits are evenly divided regarding the proper approach.

1. *The Jurisdictional Approach*

The First, Sixth, Seventh, and Ninth Circuit Courts have determined that compliance with the notice provisions of federal environmental statutes is a jurisdictional prerequisite for a district court to hear the case.[18]

In *Garcia v. Cecos International, Inc.*,[19] the First Circuit found that "failure to provide actual notice to the EPA, the state and the alleged violator at least sixty days before the commencement of the action forecloses the possibility of jurisdiction under RCRA."[20] In that case, a group of citizens brought an action in the Superior Court of Puerto Rico to prevent the construction and operation of a waste disposal facility.[21] The defendant, who managed the facility, successfully removed the case to federal court, and the plaintiffs amended

17. 116 CONG. REC. S33,103 (daily ed. Sept. 22, 1970) (statement of Sen. Muskie).
18. *See infra* notes 19, 27, 35, 42.
19. 761 F.2d 76 (1st Cir. 1985).
20. *Id.* at 83.
21. *Id.* at 78.

their complaint to include allegations of RCRA violations.[22] The First Circuit dismissed this cause of action for lack of federal jurisdiction, finding that the plaintiffs had failed to follow the procedures required for citizen suits under RCRA.[23] The court stated, "The notice requirement is not a technical wrinkle or superfluous formality that federal courts may waive at will. We believe that it is part of the jurisdictional conferral from Congress that cannot be altered by the courts."[24] The First Circuit also cited several policy reasons for requiring strict compliance with the notice requirements of RCRA.[25] The court stated that the notice provided by the potential plaintiff gives the EPA and the state a chance to investigate, facilitates extrajudicial settlement of disputes, and helps to prevent the potential plaintiff and the alleged violator from immediately taking adversarial positions.[26]

The Sixth Circuit reached a similar conclusion in a case which involved the notice requirements for citizen suit provisions in RCRA and the Clean Water Act (CWA). In *Walls v. Waste Resource Corp.*,[27] the Sixth Circuit found that compliance with the sixty-day notice provisions of RCRA and the CWA was a jurisdictional prerequisite to bringing a citizen suit under these statutes.[28] The citizen-plaintiffs alleged violations of RCRA and the CWA and brought a class action on behalf of everyone doing business or residing near the Bumpass Cove landfill.[29] Plaintiffs based jurisdiction on the citizen suit provisions in these statutes.[30] The action was remanded for dismissal. The Sixth Circuit found that the district court lacked subject matter jurisdiction to hear the case due to the plaintiffs' failure to comply with the notice requirements of RCRA and the CWA.[31] Basing its decision on a lit-

22. *Id.*
23. *Id.*
24. *Id.* at 79.
25. *Id.* at 81-82.
26. *Id.*
27. 761 F.2d 311 (6th Cir. 1985).
28. *Id.* at 317.
29. *Id.* at 314.
30. *Id.*
31. *Id.*

eral construction and the legislative history of the statutes, the court found that the notice requirements are not mere formalities, but a means of reducing litigation.[32] It was insignificant to the court that the state had been aware of the violations occurring for more than sixty days before the action was filed by the citizen-plaintiffs.[33] The court required instead that formal notice be given by the plaintiffs in strict compliance with the notice provisions.[34]

In *City of Highland Park v. Train*,[35] the Seventh Circuit decided that the notice requirements of the Clean Air Act (CAA)[36] should also be interpreted jurisdictionally.[37] The plaintiffs in *Highland Park* brought an action to prevent the construction of a shopping center, alleging that its construction would violate the CAA by creating an overwhelming amount of traffic.[38] The Seventh Circuit found that the plaintiffs' failure to give the Administrator of the EPA notice of the violation sixty days prior to filing suit was fatal to the plaintiffs' assertions under the citizen-suit provision.[39] The court found that the legislative history of citizen-suit provisions demonstrates that Congress intended that they be used in a manner least likely to "clog" the courts. Congress preferred the use of governmental action as a substitute for the citizen suit in most cases.[40]

2. *The Pragmatic Approach*

The Second, Third, Eighth, and District of Columbia Circuits have found that the notice requirements for citizen suits in federal environmental statutes should be interpreted

32. *Id.* at 316-17.

33. *Id.* at 317.

34. *Id.*

35. 519 F.2d 681 (7th Cir. 1975).

36. Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1706 (1970) (codified as amended at 42 U.S.C. § 7604(a), (b) (1988)).

37. *See* 519 F.2d 681.

38. *Id.* at 684.

39. *Id.* at 690-91.

40. *Id.*

pragmatically,[41] allowing for waiver, equitable modification, and cure.[42]

In *Natural Resources Defense Council v. Callaway*,[43] the Second Circuit found that the district court had jurisdiction to hear the case even though the plaintiffs gave notice to the EPA and other interested parties less than sixty days before commencing the action.[44] The citizen-plaintiffs in *Callaway* brought an action under the CWA against the United States Navy to prevent further dumping of polluted dredged soil into the Long Island Sound.[45] The plaintiffs gave notice of their action to the EPA and other interested parties on July 15, 1974 and filed the action on September 3, 1974, less than sixty days later.[46] The Second Circuit found that the citizen-suit provision "is not the exclusive jurisdictional basis for suit under [the CWA] and that jurisdiction of claimed violations of [the CWA] can exist under either the general federal question statute, 28 U.S.C. § 1331 [1988] or the Administrative Procedure Act 5 U.S.C. §§ 701-06 [1988]."[47] In a similar case, the Second Circuit found that by including citizen suit provisions in section 304 of the Clean Air Act,[48] "Congress made [it] clear that citizen groups are not to be treated as nuisances or troublemakers but rather as welcomed participants in the vindication of environmental interests."[49]

The Third Circuit also found that the plaintiff's failure to comply with the notice requirements of the CWA did not deprive the district court of jurisdiction to hear the case.[50] The

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41. *See infra* notes 43, 51, 58, 62, 65. Courts have used the terms "pragmatically" and "procedurally" interchangeably to describe an interpretation of notice requirements. This interpretation provides a district court with the flexibility to stay an action or allow an action to proceed even though a citizen-plaintiff has failed to specifically comply with the notice requirements.

42. Hallstrom v. Tillamook County, 844 F.2d 598, 600 (9th Cir. 1987), *aff'd*, 110 S. Ct. 304 (1989).

43. 524 F.2d 79 (2d Cir. 1975).

44. *Id.* at 83-84.

45. *Id.* at 82.

46. *Id.* at 83.

47. *Id.*

48. 42 U.S.C. § 7604 (1988).

49. Friends of the Earth v. Carey, 535 F.2d 165, 172 (2d Cir. 1976).

50. Pymatuning Water Shed Citizens for a Hygienic Env't v. Eaton, 644 F.2d

citizen-plaintiff in *Pymatuning Water Shed Citizens for a Hygienic Environment v. Eaton*[51] brought an action against various defendants alleging a sewage leak into the Shenango River in violation of the CWA.[52] The citizen-plaintiff failed to give notice to the EPA, the state, and the alleged violators sixty days prior to commencing the suit.[53] The Third Circuit followed the pragmatic approach regarding the notice requirements.[54] The court found that "requir[ing] 'dismissal and refiling of premature suits would be excessively formalistic.' Requiring such a procedure after proceeding to the stage of the case presently before us would also waste judicial resources . . . [and] would frustrate citizen enforcement of the Act."[55] The Third Circuit determined that the plaintiff's failure to meet the notification requirements under the CWA was properly cured when the district court stayed the proceedings.[56] The stay provided time for the appropriate parties to receive notification and take the necessary steps to rectify the violation.[57]

In *Proffitt v. Commissioners, Township of Bristol*,[58] the Third Circuit reaffirmed its pragmatic approach regarding notice requirements for citizen suits.[59] The court stated that "the sixty-day notice provisions should be applied flexibly to avoid hindrance of citizen suits through excessive formalism."[60] The Third Circuit also found that the notice requirement is satisfied upon "a showing that the defendants and administrative agencies had actual notice of the alleged violations more than sixty days before the suit was filed."[61]

995, 996 (3d Cir. 1981).

51. 644 F.2d 995 (3d Cir. 1981).

52. *Id.* at 996.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 997.

57. *Id.*

58. 754 F.2d 504 (3d Cir. 1985).

59. *Id.*

60. *Id.* at 506.

61. *Id.* (quoting Susquehanna Valley Alliance v. Three Mile Island, 619 F.2d 231 (3d Cir. 1980)). In *Susquehanna*, the Third Circuit found that even though the citizen-plaintiffs filed suit under the CWA only two days after giving notice to the relevant agencies, dismissal and refiling was not necessary where it appeared that the

The pragmatic or procedural approach has also been adopted by the Eighth Circuit. In *Hempstead County and Nevada County Project v. EPA*,[62] the Eighth Circuit addressed the issue of whether a grant of interim status by the EPA to the operator of a proposed hazardous waste landfill disposal facility was appropriate.[63] While the court found that it did not have the jurisdiction to review such a determination by the EPA, it noted that the failure by the citizen-plaintiffs to specifically comply with the notice requirement under RCRA did not require dismissal of the case since the purpose of the notice was satisfied.[64]

The Court of Appeals for the District of Columbia also subscribed to the pragmatic approach regarding notice requirements for citizen suits. The view of the D.C. Circuit is exemplified in *Natural Resources Defense Council, Inc. v. Train*.[65] In *Train*, the citizen-plaintiff sought to compel the EPA to publish effluent limitation guidelines as mandated by the CWA.[66] The court found that the failure by the citizen-plaintiff to give notice sixty days prior to commencing the action was not fatal to the district court's jurisdiction. The court's finding was based on a comparison between the citizen-suit provisions in the CWA and those in the CAA.[67] The court found that by enacting the citizen suit provisions in the CAA, Congress sought to permit any citizen to bring an action directly against polluters violating performance standards and emission restrictions.[68] The court stated:

> The notice requirement was intended to 'further encourage and provide for agency enforcement' that might obviate the need to resort to the courts.
>
> . . . The legislative history of the Clean Air Act Amendments reveals that the citizen suit provision re-

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agency had notice of the violation for more than sixty days. 619 F.2d at 243.

62. 700 F.2d 459 (8th Cir. 1983).
63. *Id.* at 461.
64. *Id.* at 463.
65. 510 F.2d 692 (D.C. Cir. 1975).
66. *Id.* at 695.
67. *Id.* at 699.
68. *Id.* at 700.

flected a deliberate choice by Congress to widen citizen access to the courts, as a supplemental and effective assurance that the Act would be implemented and enforced.[69]

III. The Case

A. *The Facts*

Olaf and Mary Hallstrom owned and resided on a dairy farm next to the Tillamook County sanitary landfill.[70] Before April 1981, the Hallstroms became concerned that leachate (contaminated liquid) was being discharged from the landfill and causing chemical and bacterial pollution of their surface and groundwater.[71] In April 1981, the Hallstroms mailed formal written notice to Tillamook County claiming that its operation of the landfill was in violation of RCRA. The Hallstroms also stated their intention to file a suit.[72] The Hallstroms did not send a copy of the formal notice to the Administrator of the EPA or to Oregon's Department of Environmental Quality (DEQ).[73]

Counsel for the Hallstroms claimed that the DEQ had actual knowledge of the violations by the County for at least a year and a half before the suit was filed.[74] According to a chronology of events prepared by the DEQ, it seems evident that the DEQ was aware of RCRA violations committed by the County in operating the landfill.[75]

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69. *Id.*

70. Petitioners' Opening Brief at 1, 6, Hallstrom v. Tillamook County, 110 S. Ct. 304, 307 (1989) (No. 88-42).

71. Hallstrom v. Tillamook County, 844 F.2d 598, 599 (9th Cir. 1987).

72. *Hallstrom*, 110 S. Ct. at 307.

73. *Id.*

74. Petitioners' Opening Brief at 7, Hallstrom v. Tillamook County, 110 S. Ct 304 (1989) (No. 88-42).

75. The appellants listed some of the events from a chronology prepared by the Oregon Department of Environmental Quality:

10/14/80- "Informative" enforcement letter sent to county. Monitoring wells damaged, drainage problems, excessive litter.

12/23/80- Stronger enforcement letter sent to county. Leachate overflowing berm. Leachate system problems. Too much exposed waste. Inadequate

B. *The Holdings*

1. *The District Court*

On April 9, 1982, the Hallstroms filed an action in federal district court against the County pursuant to the citizen-suit provisions of RCRA.[76] The Hallstroms were seeking injunctive relief to stop the discharge of leachate from the County's landfill into their land. After learning that the Hallstroms failed to notify the EPA or the DEQ of their intent to sue, the County made a motion for summary judgment on March 1, 1983 based on the Hallstroms' violation of the notice requirement of section 6972(b)(1) of RCRA.[77] On March 2, 1983, the Hallstroms sent the EPA and the DEQ a copy of their original notice of the RCRA violations that they had sent to the County.[78]

The district court denied the County's motion, finding that the Hallstroms had cured any defect in notice by formally notifying the EPA and the DEQ on March 2, 1983.[79] The court found that the purpose of the notice requirement was to give administrative agencies the opportunity to take over the enforcement of the environmental statute from the citizen-plaintiffs.[80] Since neither the EPA nor the DEQ expressed any interest in taking action against the County, the

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cover.

1/26/81- Very strong enforcement letter sent to county. Monitoring wells damaged, leachate system problems, drainage problems, erosion problems, too much exposed waste.

4/23/81- Permit issued for "new" landfill (current permit).

7/12/82- Notice of Violation issued to county. Monitoring wells damaged, leachate system problems, too much exposed refuse, excessive litter.

1/03/83- Notice of Violation issued to county. Excessive litter.

3/21/83- "Informative" enforcement letter sent to county. Additional monitoring wells needed. Better wet months cover material needed. Leachate system improvements needed.

Petitioners' Opening Brief at 7, Hallstrom v. Tillamook County, 110 S. Ct 304 (1989) (No. 88-42).

76. *Id.*

77. *Hallstrom*, 110 S. Ct. at 307.

78. *Id.*

79. *Id.*

80. *Id.* at 308.

court found that dismissing the action and forcing the Hallstroms to refile at that stage of the case would only serve to waste judicial resources.[81]

The district court tried the case and found that leachate from the landfill operated by the County was polluting the Hallstroms' land in violation of RCRA.[82] The County was given two years to take the necessary steps to contain the leachate.[83] The Hallstroms appealed the denial for injunctive relief and the County cross-appealed from the denial of its motion for summary judgment.[84]

2. *The Court of Appeals*

The Court of Appeals for the Ninth Circuit granted certiorari to review the decision of the district court. The Court limited its review to whether the failure by the Hallstroms to comply with the sixty-day notice requirement of RCRA deprived the district court of subject matter jurisdiction to hear the case.[85] The Ninth Circuit adopted a jurisdictional interpretation of the notice requirement.[86] The court found that the Hallstroms' failure to comply deprived the district court of jurisdiction to hear the case, and remanded the case for dismissal.[87]

The Ninth Circuit noted that this was an issue of first impression for the circuit, and that it was therefore necessary to examine the two conflicting interpretations used by the other circuit courts.[88] The court found that there were two approaches used to interpret notice requirements for citizen suits in environmental statutes.[89] The Second, Third, Eighth, and District of Columbia Circuits had adopted the pragmatic

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81. *Id.*
82. *Hallstrom*, 844 F.2d at 599.
83. *Id.*
84. *Hallstrom*, 110 S. Ct. at 308. Additionally, the Hallstroms appealed their motion for an award of attorneys fees to the Ninth Circuit. *Id.*
85. *Hallstrom*, 844 F.2d at 599.
86. *Id.*
87. *Id.*
88. *Id.* at 600.
89. *Id.*

approach. They interpreted the notice requirements as being procedural and therefore subject to waiver, equitable modification, and cure.[90] "Under this approach, so long as 60 days elapse before the district court takes action, formal compliance with the terms of the requirement is not required. This approach focuses on the role and right of the citizen in enforcing federal environmental policies."[91]

However, the majority in the Ninth Circuit was persuaded to join the First, Sixth, and Seventh Circuits and adopted a jurisdictional approach regarding notice provisions, making strict compliance with the requirements a jurisdictional prerequisite for bringing a citizen suit.[92] The court stated, "This approach focuses on the plain language of the statute and the policy concerns underlying the notice requirement. . . . [T]he jurisdictional interpretation of § 6972(b) serves better the underlying policy aims of encouraging nonjudicial resolution of environmental conflicts."[93]

In adopting the jurisdictional approach, the Ninth Circuit majority found that:

> [T]he notice requirement and its legislative history reflect Congress's belief that the citizen-plaintiff working with the state or the EPA can better resolve environmental disputes than can the courts. Congress believed that citizen enforcement through the courts should be secondary to administrative enforcement by the EPA. . . .
>
> We will not attribute to Congress an intent to enact a provision after hours of debate that could be evaded by every potential plaintiff, thus rendering it meaningless.[94]

The majority also found that Congress' intent that the notice provision be interpreted jurisdictionally is evidenced by the 1984 amendments to the notice requirements of RCRA.[95] This

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90. *Id.*
91. *Id.*
92. *Id.*
93. *Id.* at 600-01.
94. *Id.* at 601.
95. *Id.* at 600. *See* 42 U.S.C. § 6972(b) (1988). This provision allows an action to begin immediately after notification has been given when the violation concerns

addition "waives the 60-day notice requirement if the alleged violation involves hazardous waste . . . . This provision makes clear that Congress considered the 60-day notice requirement and intended that it apply in all cases except those involving hazardous waste."[96] The *Hallstrom* majority also noted that a jurisdictional interpretation would enable the government to receive notice of environmental disputes and handle them through nonjudicial means. The court stated, "Non-judicial resolution of such conflicts is more likely if parties consider their interests and positions in a nonadversarial setting before suit is filed."[97] For these reasons, the Ninth Circuit concluded that the Hallstroms' failure to comply with the notice requirements of RCRA deprived the district court of jurisdiction to hear the case. The Ninth Circuit therefore remanded the case for dismissal.[98]

In his dissent, Justice Pregerson stated that "[b]y requiring dismissal, the majority exalt[ed] form over substance."[99] Justice Pregerson pointed out that the EPA and the DEQ had actual notice of the County's violations before the trial began on July 22, 1985.[100] He stated:

> One of the purposes of the 60-day notice requirement is to allow the EPA to enforce the statute. . . . [T]he EPA was well aware of the conflict between the Hallstroms and Tillamook County. In fact, EPA personnel had called [counsel for the Hallstroms] at various stages of the district court action to ask how it was proceeding. At no time did the EPA indicate any interest in enforcing the statute; it was content to let the Hallstroms proceed with their citizens' suit.[101]

The *Hallstrom* dissent also noted that most of the circuit courts that had addressed this issue determined that the no-

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RCRA hazardous waste management standards.

96. *Hallstrom*, 844 F.2d at 600-01.
97. *Id.* at 601.
98. *Id.*
99. *Id.*
100. *Id.* at 602.
101. *Id.*

tice requirements for citizen suits in environmental statutes are pragmatic and not jurisdictional.[102] A pragmatic approach only requires that sixty days lapse between the time that the proper parties are notified and the time that the district court can take action.[103] Justice Pregerson stated:

> This approach furthers the goal of agency enforcement: it allows the agency to consider the alleged violation for 60 days. If the agency has taken no action after 60 days, the district court may proceed. It would be "excessively formalistic" to require the district court to dismiss the action and the parties to refile.[104]

3. *The United States Supreme Court*

The Hallstroms appealed to the United States Supreme Court, which granted certiorari.[105] On appeal, counsel for the Hallstroms again argued that the notice requirement should be interpreted pragmatically, making it subject to waiver, equitable modification, and cure.[106] Counsel compared the RCRA notice requirement to the requirement in Title VII of the Civil Rights Act of 1964,[107] that charges of Title VII violations be filed with the Equal Employment Opportunities Commission within a certain statutory period.[108] The Supreme Court found that this prefiling requirement was not a jurisdictional prerequisite to a Title VII action, but that it was a requirement that was subject to waiver, estoppel, and equitable tolling.[109]

Counsel for the Hallstroms also argued that a procedural interpretation of the notice requirement allows for government enforcement of RCRA while protecting the environment

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102. *Id.*
103. *Id.*
104. *Id.*
105. Hallstrom v. Tillamook County, 110 S. Ct. 304, 308 (1989).
106. *Id.* at 309.
107. Pub. L. No. 88-352, § 706(d), 78 Stat. 260 (1964) (codified as amended at 42 U.S.C. § 2000e-5(e) (1988)).
108. *Hallstrom*, 110 S. Ct. at 309.
109. *Id. See* Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982).

and fostering citizen enforcement.[110] According to this argument, whether the plaintiff waits for sixty days after notification before filing an action, or the district court stays the proceedings for sixty days after notification has been given, the appropriate parties are still notified and given the requisite amount of time to act.[111]

Counsel for the County argued that the notice requirement must be interpreted jurisdictionally based upon the plain language of RCRA.[112] In arguing before the United States Supreme Court, counsel for the County relied almost entirely upon a literal interpretation of the applicable provisions of RCRA.[113]

The United States Supreme Court affirmed the decision of the Court of Appeals for the Ninth Circuit and granted the County's motion for summary judgment.[114] Justice O'Connor delivered the majority opinion and was joined in her decision by Chief Justice Rehnquist, and Justices White, Blackmun, Stevens, Scalia, and Kennedy.[115] Justice Marshall was joined in his dissenting opinion by Justice Brennan.[116]

The Court found the clear language of RCRA to be controlling.[117] The notice requirement was found by the Court to be a specific limitation on a citizen's right to bring an action under RCRA.[118] The Court cited Rule 3 of the Federal Rules of Civil Procedure and noted that an action is commenced when a complaint is filed with the court.[119] The Court stated:

> [R]eading § 6972(b)(1) in light of this rule, a plaintiff may not file suit before fulfilling the 60-day notice require-

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110. Petitioners' Opening Brief at 16, Hallstrom v. Tillamook County, 110 S. Ct. 304 (1989) (No. 88-42).

111. *Id.* at 19-20.

112. Respondent's Brief at 7, Hallstrom v. Tillamook County, 110 S. Ct. 304 (1989) (No. 88-42).

113. *Id.* at 7-14.

114. Hallstrom v. Tillamook County, 110 S. Ct. 304, 312 (1989).

115. *Id.* at 307.

116. *Id.*

117. *Id.* at 308-09.

118. *Id.*

119. *Id.* at 309.

> ment. Staying judicial action once the suit has been filed does not honor this prohibition. Congress could have excepted parties from complying with the notice or delay requirement; indeed, it carved out such an exception in its 1984 amendments to RCRA.[120]

The majority did not find the Hallstroms' comparison between the notice requirements of RCRA and the filing requirements of Title VII to be persuasive.[121] The Court held that the filing requirement of Title VII acts as a statute of limitations for the action, whereas under RCRA, the plaintiffs have full control over the timing of their suit.[122] The Court stated that, "[t]he equities do not weigh in favor of modifying statutory requirements when the procedural default is caused by petitioners' 'failure to take the minimal steps necessary' to preserve their claims."[123]

In examining the legislative history of citizen suits in environmental statutes, the majority found evidence of an intent by Congress to strike a balance between encouraging citizen enforcement of environmental statutes and avoiding an excessive number of citizen suits in the federal courts.[124] "[N]otice allows Government agencies to take responsibility for enforcing environmental regulations, thus obviating the need for citizen suits. . . . [N]otice [also] gives the alleged violator 'an opportunity to bring itself into complete compliance with the Act and thus likewise render unnecessary a citizen suit.' "[125]

The majority reached the conclusion that "the notice and 60-day delay requirements are mandatory conditions precedent to commencing suit under the RCRA citizen suit provision; a District Court may not disregard these requirements at its discretion."[126] However, the Court did not explicitly follow

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120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* (quoting Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 466 (1975)).

124. *Id.* at 310.

125. *Id.* (quoting Gwaltney of Smithfield, Ltd. Inc. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 60 (1987)).

126. *Id.* at 311.

a jurisdictional interpretation. The Court held:

> The parties have framed the question presented in this case as whether the notice provision is jurisdictional or procedural. In light of our literal interpretation of the statutory requirement, we need not determine whether § 6972(b) is jurisdictional in the strict sense of the term. [citation omitted] As a general rule, if an action is barred by the terms of a statute, it must be dismissed.[127]

Justice Marshall, with whom Justice Brennan concurred, based his dissent on the fact that "requiring district courts to dismiss every action filed in violation of § 6972(b) ill serves both judicial economy and Congress's purposes in adopting RCRA . . . ."[128] The dissent conceded that the applicable provisions in RCRA require notice to be given before a citizen files a complaint.[129] Justice Marshall stated, "The Court fails to recognize, however, that there is no necessary connection between a violation of that statute and any particular sanction for noncompliance."[130] The dissent pointed out that the Court had found that staying proceedings is preferable to dismissal with leave to refile.[131] Therefore, the dissent argued that the violation of a mandatory precondition to a citizen action does not mandate that the action be dismissed.[132]

The dissent also found that staying the proceedings for sixty days would serve the purposes of the notice requirement as well as mandate dismissal and refiling for failure to com-

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127. *Id.*

128. *Id.* at 312.

129. *Id.*

130. *Id.* at 313.

131. *Id.* (citing Oscar Mayer & Co. v. Evans, 441 U.S. 750 (1979)). The dissent referred to the Court's decision in *Oscar Mayer* where the Court stated, " 'To require a second "filing" by the aggrieved party after termination of state proceedings would serve no purpose other than the creation of an additional procedural technicality. Such technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process.' " *Hallstrom*, 110 S. Ct. at 313 (quoting Oscar Mayer & Co. v. Evans, 441 U.S. 750, 765 n.13 (1979)) (citation omitted).

132. *Hallstrom*, 110 S. Ct. at 313.

ply.[133] The purposes of requiring notification in citizen suits, attempting to trigger government action and bring violators into compliance, would also be served.[134] "All that is necessary to meet these concerns is a 60-day delay; whether it comes immediately before or immediately after the filing of the complaint is immaterial."[135]

In addressing the legislative history behind citizen suits, the dissent found that such provisions were enacted by Congress to encourage citizens to bring suits.[136] The dissent stated:

> Where Congress intends to facilitate citizen suits, and where the salutary purposes of the notice provision can be served equally well by a stay as by dismissal, a regime that requires the dismissal of a citizen suit that has "consumed the time and energy of a District Court and the parties . . ." is simply inconsistent with the will of Congress.[137]

IV. Analysis

In analyzing the decision of the United States Supreme Court in *Hallstrom*, it is important to examine the purposes of providing for citizen suits and the effect of the Court's decision to interpret the notice requirements for citizen suits literally. In furtherance of these purposes, the requirements for citizen actions should be pragmatically interpreted.

Citizen suits provide a means by which an individual may protect himself and his environment. In its decision, the Supreme Court noted that one of the purposes of providing for citizen suits is to trigger governmental action.[138] The citizen suit provision is a means by which an individual is given rights to enforce environmental statutes similar to those given

133. *Id.* at 314.
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.* (quoting the majority opinion in *Hallstrom*, 110 S. Ct. at 312).
138. *Hallstrom*, 100 S. Ct. at 310.

to a governmental agency.[139] Considering the time and expense necessary to bring such an enforcement suit, most citizen-plaintiffs would prefer to allow the EPA or a state agency to bring the action. However, the government has the option of whether to pursue the matter.[140] If the government chooses to do nothing and the violation continues, the citizen-plaintiff's only recourse is to proceed with an action himself. According to a literal, jurisdictional interpretation of the notice requirements, a citizen-plaintiff would be forced to endure a violation of an environmental regulation for sixty days, even if the EPA and the state immediately refused to become involved upon notification.

The threat of filing suit does not give a citizen-plaintiff as much leverage against the violator as the actual filing of a suit. Providing district courts with the flexibility and discretion to stay proceedings allows time for any necessary notification, while forcefully encouraging the violator to come into compliance. Bringing a suit may also be a more effective means of triggering government action in the matter than an informal complaint to the violator. Filing a suit against a violator may encourage rectification of the violation more than a nonadversarial threat. A pragmatic interpretation of the notice requirement provides district courts with the discretion to adjust the proceedings of an enforcement action where it is necessary.

As the dissent noted, a pragmatic approach better serves judicial economy.[141] Allowing district courts the discretion to stay proceedings and permit a citizen-plaintiff the opportunity to cure his failure to comply with the notice requirements saves the case from having to be dismissed and refiled. Dismissal and refiling wastes judicial resources, especially where a case is dismissed after reaching an advanced stage of litigation. It may also be prohibitively expensive for a citizen-plaintiff to refile an action. Considering the burdensome time and expense involved in the enforcement of an environmental reg-

139. 42 U.S.C. § 6972 (1988).
140. *Id.* *See Hallstrom*, 110 S. Ct. at 311.
141. *Hallstrom*, 110 S. Ct. at 315.

ulation by an individual, allowing district courts to have discretion with respect to the notice requirements would not encourage unnecessary litigation.

The 1984 amendments to RCRA's notice requirements are also evidence of the need for a pragmatic interpretation of these provisions. This addition to the statute makes it possible for an action to be filed immediately after notice is given when the violation concerns RCRA's hazardous waste management standards. This provision shows congressional awareness of the need for immediate action in certain situations. Even in those instances where the violation does not involve a hazardous waste, there still may be an urgent need for immediate action where an individual's property or livelihood is threatened by the violation. A pragmatic interpretation of the notice requirement allows the district court to provide for such situations by staying a proceeding after an action is filed. Actually bringing an action is often a stronger enforcement tool for an individual than the threat of a suit in the future.

V. Conclusion

Citizen suits encourage the enforcement of federal environmental statutes. A pragmatic or procedural interpretation of the notice requirements facilitates citizen suits.

The holding of the United States Supreme Court in *Hallstrom v. Tillamook County* sets a precedent not only for citizen suits brought under RCRA, but for citizen suits brought under other environmental statutes with similar provisions. The Court's decision to literally interpret notice requirements for citizen suits deprives citizen-plaintiffs of the flexibility necessary in certain circumstances, such as those where the EPA and the state refuse to become involved in the enforcement. When the plaintiff has failed to specifically comply with the statutory provisions, forcing the dismissal and refiling of the citizen suit does nothing to further the purposes of requiring notification and is a waste of judicial resources.

A future amendment to the notice requirements, specifically providing courts with the discretion necessary to apply a pragmatic approach, may be a more effective means of aiding

citizen enforcement. However, until this legislation is enacted, we are forced to take a jurisdictional approach to interpreting notice requirements for citizen suits.