

Rev. 4/18

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CIVIL APPEAL STATEMENT

Please TYPE. Attach additional pages if necessary. 11th Circuit Docket Number: 20-13651-H

Caption: South River Watershed Alliance, Inc. and Jacqueline Echols V. DeKalb County, Georgia	District and Division: <u>Northern District of Georgia, Atlanta Division</u> Name of Judge: <u>Honorable Steven D. Grimberg</u> Nature of Suit: <u>Clean Water Act citizen suit</u> Date Complaint Filed: <u>9/24/2019</u> District Court Docket Number: <u>1:19-cv-4299-SDG</u> Date Notice of Appeal Filed: <u>9/29/2020</u> <input type="checkbox"/> Cross Appeal <input type="checkbox"/> Class Action Has this matter previously been before this court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide (a) Caption: _____ (b) Citation: _____ (c) Docket Number: _____
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	Attorney Name	Mailing Address	Telephone, Fax, Email
For Appellant:			
<input checked="" type="checkbox"/> Plaintiff	Jon L. Schwartz	1100 Peachtree St NE	404-667-3047
<input type="checkbox"/> Defendant		Suite 250	jon@jonschwartz.net
<input type="checkbox"/> Other (Specify)		Atlanta GA 30309	
For Appellee:			
<input type="checkbox"/> Plaintiff	Robert T. Silliman	Dentons US LLP	404-527-4000
<input checked="" type="checkbox"/> Defendant	Uchenna Ekuma-Nkama	303 Peachtree St NE	404-527-4198 (fax)
<input type="checkbox"/> Other (Specify)	Maxwell R. Jones	Suite 5300	todd.silliman@dentons.com
		Atlanta GA 30308	uchenna.ekuma-nkama@dentons.com
			max.jones@dentons.com

Please CIRCLE/CHECK/COMPLETE the items below and on page 2 that apply.

Jurisdiction	Nature of Judgment	Type of Order	Relief
<input checked="" type="checkbox"/> Federal Question	<input checked="" type="checkbox"/> Final Judgment, 28 USC 1291	<input checked="" type="checkbox"/> Dismissal/Jurisdiction	Amount Sought by Plaintiff: \$ _____
<input type="checkbox"/> Diversity	<input type="checkbox"/> Interlocutory Order, 28 USC 1292(a)(1)	<input type="checkbox"/> Default Judgment	Amount Sought by Defendant: \$ _____
<input type="checkbox"/> US Plaintiff	<input type="checkbox"/> Interlocutory Order Certified, 28 USC 1292(b)	<input type="checkbox"/> Summary Judgment	Awarded: \$ _____
<input type="checkbox"/> US Defendant	<input type="checkbox"/> Interlocutory Order, Qualified Immunity	<input type="checkbox"/> Judgment/Bench Trial	to _____
	<input type="checkbox"/> Interlocutory Order, Final Agency Action (Review)	<input type="checkbox"/> Judgment/Jury Verdict	Injunctions:
	<input type="checkbox"/> 54(b)	<input type="checkbox"/> Judgment/Directed Verdict/NOV	<input type="checkbox"/> TRO
		<input type="checkbox"/> Injunction	<input type="checkbox"/> Preliminary <input type="checkbox"/> Granted
		<input type="checkbox"/> Other _____	<input type="checkbox"/> Permanent <input type="checkbox"/> Denied

Based on your present knowledge:

- (1) Does this appeal involve a question of First Impression? Yes No
 What is the issue you claim is one of First Impression? Whether a Consent Decree with a deadline to fix less than one-third of a sewer system can bar a Clean Water Act citizen suit for spills in other parts of the system which have no deadlines for rehabilitation and no deadlines to stop sewage spills.
- (2) Will the determination of this appeal turn on the interpretation or application of a particular case or statute? Yes No

If Yes, provide

- (a) Case Name/Statute Clean Water Act, Section 505(b)(1)(B)
 (b) Citation 33 U.S.C. § 1365(b)(1)(B)
 (c) Docket Number if unreported _____

- (3) Is there any case now pending or about to be brought before this court or any other court or administrative agency that
 (a) Arises from substantially the same case or controversy as this appeal? Yes No
 (b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal? Yes No

If Yes, provide

- (a) Case Name United States et al v. DeKalb County, Georgia
 (b) Citation _____
 (c) Docket Number if unreported 1:10-cv-4039-SDG
 (d) Court or Agency U.S. District Court, N.D. Georgia, Atlanta Division

- (4) Will this appeal involve a conflict of law
 (a) Within the Eleventh Circuit? Yes No
 (b) Among circuits? Yes No

If Yes, explain briefly:

- (5) Issues proposed to be raised on appeal, including jurisdictional challenges:

The Clean Water Act bars citizen enforcement of the Act when the U.S. Environmental Protection Agency or the State "has commenced and is diligently prosecuting" an action in court "to require compliance" with the same standard or limitation. 33 U.S.C. § 1365(b)(1)(B). Sewage spills violate a Clean Water Act effluent standard or limitation.

DeKalb County's sewer system includes "Priority Areas" and "Non-Priority Areas." The issue in this appeal is whether a 2011 Consent Decree bars a Clean Water Act citizen suit for sewage spills in Non-Priority Areas when the Consent Decree did not include any deadline for DeKalb County to rehabilitate the sewer system within Non-Priority Areas and did not require the County to stop sewage spills in Non-Priority Areas.

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS 13 DAY OF October, 2020.

Jon L. Schwartz

NAME OF COUNSEL (Print)



SIGNATURE OF COUNSEL