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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-201204

January 23, 1981

[Authority of District Court to Enforce Agency-Signed Consent

Donald Stever, Jr.
Chief, Pollution Control Section
Room 2644
U.S. Department of Justice
9th & Pennsylvania Avenue, NW.
Washington, D.C. 20530

- Agreements

Dear Mr. Stever:

This responds to your letter of November 10, 1980. The United States Court of Appeals for the District of Columbia Circuit has remanded the case of Environmental Defense Fund v. Costle, No. 79-1473 (D.C. Cir. 1980), in which you are handling EPA's defense. On remand the Court ordered the District Court to explore the following question:

"whether it is ever within the authority of a district court to enter and enforce a consent judgment which restricts the discretion an agency might otherwise have in selecting the means by which it will meet its mandatory responsibilities under a general framework statute * * *." Slip Op. at 57.

You request our opinion as one of many potentially affected Federal agencies since the Court feels that the question "may have far reaching implications affecting other federal departments and agencies."

Our interest stems from our general concern that Federal agencies be able to meet their statutory duties in the most cost-effective and efficient manner within the bounds of the law. In this regard we view the continuing viability of court-enforced consent agreements to be of significant import to the Federal Government generally, and we offer the following comments in support of an affirmative answer to the Court's stated question.

The instant controversy involves an agreement entered into by the EPA and environmental interest groups who initially brought suit to compel the agency to meet its statutory duties under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (1976). The authority of



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a District Court to grant mandamus in such an action is based on the jurisdiction conferred by 28 U.S.C. § 1361 (1976), and is unchallenged regarding enforcement of a non-discretionary duty. In the present case however, EPA has submitted to an agreement which binds it as to the manner in which it will meet its statutory duty, an area otherwise within the agency's discretion. The question, originally posed by the environmental groups, is whether it is "ever" within the authority of the District Court to enforce such an agreement.

Ordinarily, a court cannot control the judgment or discretion of an administrative agency (see 52 Am Jur 2d, Mandamus §§ 162, 164), but in the present case the agency has entered into a commitment whereby it has received a quid pro quo for limiting its discretion. In such a case the agency will presumably only consent when it believes the burdens of protracted litigation or risk of possible loss exceed the burdens of consenting to the settlement terms.

If a consent agreement is entered into in good faith on the part of the agency, with due consideration as to lawfulness and public policy, it would appear to be a proper and valuable tool for the Government. Its usefulness would however be severely lessened if the terms of such an agreement could not be enforced by appropriate judicial action, and parties bringing suit would have little incentive to accept the promises of the agency. Thus court enforcement is a necessary and desirable element in promoting lawful and expeditious settlements. Should strict enforcement of the terms of the agreement result in an unforeseen and arguably unlawful infringement of an agency's discretion, a motion to amend the agreement could be filed.

For the above reasons, this Office would argue in the affirmative as to the authority of a District Court to enforce agency-signed consent agreements.

Sincerely yours,



Milton J. Socolar
General Counsel