

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed January 29, 1999

No. 97-1651

George E. Warren Corporation,  
Petitioner

v.

U.S. Environmental Protection Agency and  
Carol M. Browner, Administrator,  
Respondents

Friends of the Earth, et al.,  
Intervenors

Consolidated with  
97-1656

On Petitions for Review of an Order of the  
Environmental Protection Agency

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Before: Ginsburg, Sentelle, and Rogers, Circuit Judges.

O R D E R

Upon consideration of the EPA's Motion To Clarify and Amend the Court's Opinion With Respect to the Issue of Prudential Standing [159 F.3d 616 (1998)] and of the responsive pleadings filed with respect thereto, it is

ORDERED by the court that the motion is granted, and the opinion is amended as follows:

At pages 620-21: Delete the two paragraphs immediately following the heading "A. Justiciability," as well as the first word of the third paragraph: "Second."

The material now to be omitted was based upon the erroneous belief that the petition for review had been filed under 42 U.S.C. s 7604(a), when in fact it was filed under 42 U.S.C. s 7607(b)(1). We need not, however, revisit the issue whether the Independent Refiners Coalition had prudential standing under the latter provision.

Although Article III precludes us from deciding a matter on the merits before determining that the party presenting it has constitutional standing to do so, see *Steel Co. v. Citizens for a Better Env't*, 118 S. Ct. 1003, 1016 (1998), there is no such barrier to deciding a matter on the merits before determining that the party presenting it has prudential standing. See *id.* at 1013 & n.2 (citing *National Railroad Passenger Corp. v. National Ass'n of Railroad Passengers*, 414 U.S. 453, 465 n.13 (1974)). Having already rejected the IRC's claims on their merits, therefore, we need not now retrospectively decide whether it had prudential standing to bring those claims--though it is unlikely we would have proceeded in this manner going forward. See *Busse Broadcasting Corp. v. FCC*, 87 F.3d 1456, 1462-63 (D.C. Cir. 1996) (presenting rare case in which appropriate to decide merits before prudential standing).

So ordered.