CHAPTER 2

The issue of standing is discussed in Chapter 2 of the text. The following is the seminal environmental case that provides the requirements for environmental groups to have standing.

SIERRA CLUB v. MORTON

United States Supreme Court
405 U.S. 727 (1972).

JUSTICE STEWART:

The Mineral King Valley is an area of great natural beauty nestled in the Sierra Nevada Mountains in Tulare County, California, adjacent to Sequoia National Park. It has been part of the Sequoia National Forest since 1926, and is designated as a national game refuge by special Act of Congress. Though once the site of extensive mining activity, Mineral King is now used almost exclusively for recreational purposes. Its relative inaccessibility and lack of development have limited the number of visitors each year, and at the same time have preserved the valley's quality as a quasi-wilderness area largely uncluttered by the products of civilization.

The United States Forest Service, which is entrusted with the maintenance and administration of national forests, began in the late 1940's to give consideration to Mineral King as a potential site for recreational development. Prodded by a rapidly increasing demand for skiing facilities, the Forest Service published a prospectus in 1965, inviting bids from private developers for the construction and operation of a ski resort that would also serve as a summer recreation area. The proposal of Walt Disney Enterprises, Inc., was chosen from those of six bidders, and Disney received a three-year permit to conduct surveys and explorations in the valley in connection with its preparation of a complete master plan for the resort.

The final Disney plan, approved by the Forest Service in January 1969, outlines a $35 million complex of motels, restaurants, swimming pools, parking lots, and other structures designed to accommodate 14,000 visitors daily. This complex is to be constructed on 80 acres of the valley floor under a 30-year use permit from the Forest Service. Other facilities, including ski lifts, ski trails, a cog-assisted railway, and utility installations, are to be constructed on the mountain slopes and in other parts of the valley under a revocable special-use permit. To provide access to the resort, the State of California proposes to construct a highway 20 miles in length. A section of this road would traverse Sequoia National Park, as would a proposed high-voltage power line needed to provide electricity for the resort. Both the highway and the power line require the approval of the Department of the Interior, which is entrusted with the preservation and maintenance of the national parks

Representatives of the Sierra Club, who favor maintaining Mineral King largely in its present state, followed the progress of recreational planning for the valley with close attention and increasing dismay. They unsuccessfully sought a public hearing on the proposed development in 1965, and in subsequent correspondence with officials of the Forest Service and the Department of the Interior, they expressed the Club's objections to Disney's plan as a whole and to particular features included in it. In June 1969 the Club filed the present suit in the United States District Court for the Northern District of California, seeking a declaratory judgment that various aspects of the proposed development contravene federal laws and regulations governing the preservation of national parks, forests, and game refuges, and also seeking preliminary and permanent injunctions restraining the federal officials involved from granting their approval or issuing permits in connection with the

Mineral King project. The petitioner Sierra Club sued as a membership corporation with "a special interest in the conservation and the sound maintenance of the national parks, game refuges and forests of the country," and invoked the judicial-review provisions of the Administrative Procedure Act, 5 U.S.C. '701 et seq.

After two days of hearings, the District Court granted the requested preliminary injunction. It rejected the respondents' challenge to the Sierra Club's standing to sue, and determined that the hearing had raised questions "concerning possible excess of statutory authority, sufficiently substantial and serious to justify a preliminary injunction. . . ." The respondents appealed, and the Court of Appeals for the Ninth Circuit reversed . . . With respect to the petitioner's standing, the court noted that there was "no allegation in the complaint that members of the Sierra Club would be affected by the actions of [the respondents] other than the fact that the actions are personally displeasing or distasteful to them," *id*, at 33, and concluded:

> "We do not believe such club concern without a showing of more direct interest can constitute standing in the legal sense sufficient to challenge the exercise of responsibilities on behalf of all the citizens by two cabinet level officials of the government acting under Congressional and Constitutional authority," . . .

Alternatively, the Court of Appeals held that the Sierra Club had not made an adequate showing of irreparable injury and likelihood of success on the merits to justify issuance of a preliminary injunction. The court thus vacated the injunction. The Sierra Club filed a petition for a writ of certiorari which we granted, . . ., to review the questions of federal law presented.

The first question presented is whether the Sierra Club has alleged facts that entitle it to obtain judicial review of the challenged action. Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends upon whether the party has alleged such a "personal stake in the outcome of the controversy." . . . as to ensure that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." . . . the inquiry as to standing must begin with a determination of whether the statute in question authorizes review at the behest of the plaintiff.

The Sierra Club relies upon '10 of the Administrative Procedure Act (APA), 5 U.S.C. Section 702, which provides:

> "A person suffering legal wrong because of agency action, of adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

Early decisions under this statute interpreted the language as adopting the various formulations of "legal interest" and "legal wrong" then prevailing as constitutional requirements of standing. But, in *Association of Data Processing Service Organizations, Inc. v. Camp*, . . . decided the same day, we held more broadly that persons had standing to obtain judicial review of federal agency action under '10 of the APA where they had alleged that the challenged action had caused them "injury in fact," and where the alleged injury was to an interest "arguably within the zone of interests to be protected or regulated" by the statutes that the agencies were claimed to have violated.

. . .

The injury alleged by the Sierra Club will be incurred entirely by reason of the change in the uses to which Mineral King will be put, and the attendant change in the aesthetics and ecology of the area. Thus, in referring to the road to be built through Sequoia National Park, the complaint alleged that the development "would destroy or otherwise adversely affect the scenery, natural and historic objects and wildlife of the park and would impair the enjoyment of the park for future

generations." We do not question that this type of harm may amount to an "injury in fact" sufficient to lay the basis for standing under Section 10 of the APA. Aesthetic and environmental well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process. But the "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.

The impact of the proposed changes in the environment of Mineral King will not fall indiscriminately upon every citizen. The alleged injury will be felt directly only by those who use Mineral King and Sequoia National Park, and for whom the aesthetic and recreational values of the area will be lessened by the highway and ski resort. The Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the Disney development. Nowhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose, much less that they use it in any way that would be significantly affected by the proposed actions of the respondents.

The Club apparently regarded any allegations of individualized injury as superfluous, on the theory that this was a "public" action involving questions as to the use of natural resources, and that the Club's longstanding concern with and expertise in such matters were sufficient to give it standing as a "representative of the public." This theory reflects a misunderstanding of our cases involving so-called "public actions" in the area of administrative law.

Taken together, *Saunders* and *Scripps-Howard* thus established a dual proposition: the fact of economic injury is what gives a person standing to seek judicial review under the statute, but once review is properly invoked, that person may argue the public interest in support of his claim that the agency has failed to comply with its statutory mandate. It was in the latter sense that the "standing" of the appellant in *Scripps-Howard* existed only as a "representative of the public interest." It is in a similar sense that we have used the phrase "private attorney general" to describe the function performed by persons upon whom Congress has conferred the right to seek judicial review of agency action. . . .

The trend of cases arising under the APA and other statutes authorizing judicial review of federal agency action has been toward recognizing that injuries other than economic harm are sufficient to bring a person within the meaning of the statutory language, and toward discarding the notion that an injury that is widely shared is *ipso facto* not an injury sufficient to provide the basis for judicial review. We noted this development with approval in *Data Processing*, . . ., in saying that the interest alleged to have been injured "may reflect 'aesthetic, conservational, and recreational' as well as economic values." But broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.

Some courts have indicated a willingness to take this latter step by conferring standing upon organizations that have demonstrated "an organizational interest in the problem" of environmental or consumer protection. . . .But a mere "interest in a problem," no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" within the meaning of the APA. The Sierra Club is a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide "special interest" organization

however small or short-lived. And if any group with a bona fide "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.

The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial review, nor does it prevent any public interests from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal would be undermined were we to construe the APA to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process. The principle that the Sierra Club would have us establish in this case would do just that.

. . .

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole--a creature of ecclesiastical law--is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.

So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes--fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water--whether it be a fisherman, a canoeist, a zoologist, or a logger--must be able to speak for the values which the river represents and which are threatened with destruction.

I do not know Mineral King. I have never seen it nor traveled it, though I have seen articles describing its proposed "development" notably Hano, Protectionists vs. recreationists-- . . .The Sierra Club in its complaint alleges that "[o]ne of the principal purposes of the Sierra Club is to protect and conserve the national resources of the Sierra Nevada Mountains." The District Court held that this uncontested allegation made the Sierra Club "sufficiently aggrieved" to have "standing" to sue on behalf of Mineral King.

Mineral King is doubtless like other wonders of the Sierra Nevada such as Tuolumne Meadows and the John Muir Trail. Those who hike it, fish it, or visit it merely to sit in solitude and wonderment are legitimate spokesmen for it, whether they may be few or many. Those who have that intimate relation with the inanimate object about to be injured, polluted, or otherwise despoiled are its legitimate spokesmen.

The Solicitor General, whose views on this subject are in the Appendix to this opinion, takes a wholly different approach. He considers the problem in terms of "government by the Judiciary." With all respect, the problem is to make certain that the inanimate objects, which are the very core of America's beauty, have spokesmen before they are destroyed. It is, of course, true that most of them are under the control of a federal or State agency. The standards given those agencies are usually expressed in terms of the "public interest." Yet "public interest" has so many differing shades of meaning as to be quite meaningless on the environmental front...

Yet the pressures on agencies for favorable action one way or the other are enormous. The suggestion that Congress can stop action which is undesirable is true in theory; yet even Congress

is too remote to give meaningful direction and its machinery is too ponderous to use very often. The federal agencies of which I speak are not venal or corrupt. But they are notoriously under the

control of powerful interests who manipulate them through advisory committees, or friendly working relations, or who have that natural affinity with the agency which in time develops between the regulator and the regulated...

. . .

The Forest Service--one of the federal agencies behind the scheme to despoil Mineral King--has been notorious for its alignment with lumber companies, although its mandate from Congress directs it to consider the various aspects of multiple use in its supervision of the national forests.

The voice of the inanimate object, therefore, should not be stilled. That does not mean that the judiciary takes over the managerial functions from the federal agency. It merely means that before these priceless bits of Americana (such as a valley, an alpine meadow, a river, or a lake) are forever lost or are so transformed as to be reduced to the eventual rubble of our urban environment, the voice of the existing beneficiaries of these environmental wonders should be heard.

Perhaps they will not win. Perhaps the bulldozers of "progress" will plow under all the aesthetic wonders of this beautiful land. That is not the present question. The sole question is, who has standing to be heard?

Those who hike the Appalachian Trail into Sunfish Point, New Jersey, and camp or sleep there, or run the Allagash in Maine, or climb the Guadalupes in West Texas, or who canoe and portage the Quetico Superior in Minnesota, certainly should have standing to defend those natural wonders before courts or agencies, though they live 3,000 miles away. Those who merely are caught up in environmental news or propaganda and flock to defend these waters or areas may be treated differently. That is why these environmental issues should be tendered by the inanimate object itself. Then there will be assurances that all of the forms of life which it represents will stand before the court--the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams. Those inarticulate members of the ecological group cannot speak. But those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological community.

Ecology reflects the land ethic; and Aldo Leopold wrote in “A Sand County Almanac” . . . "The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land."

That, as I see it, is the issue of "standing" in the present case and controversy.

The Supreme Court considers the elements of standing for a particular environmental statute in the following case.

STEEL COMPANY v. CITIZENS FOR A BETTER ENVIRONMENT

United States Supreme Court
523 U.S. 118 (1998).

JUSTICE SCALIA:

Respondent, an association of individuals interested in environmental protection, sued petitioner, a small manufacturing company in Chicago, for past violations of EPCRA. EPCRA establishes a framework of State, regional and local agencies designed to inform the public about the presence of hazardous and toxic chemicals, and to provide for emergency response in the event of health-threatening release. Central to its operation are reporting requirements compelling users of specified toxic and hazardous chemicals to file annual emergency and hazardous chemical inventory forms and toxic chemical release forms, which contain, inter alia, the name and location of the facility, the name and quantity of the chemical on hand, and, in the case of toxic chemicals, the waste-disposal method employed and the annual quantity released into each environmental medium.

For purposes of this case, . . . the crucial enforcement mechanism is the citizen-suit provision, which authorizes civil penalties and injunctive relief. This provides that "any person may commence a civil action on his own behalf against [a]n owner or operator of a facility for failure, among other things, to [c]omplete and submit an inventory form under section 11022(a) of this title [and] section 11023(a) of this title. " As a prerequisite to bringing such a suit, the plaintiff must, 60 days prior to filing his complaint, give notice to the Administrator of the EPA, the State in which the alleged violation occurs, and the alleged violator. The citizen suit may not go forward if the Administrator "has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty."

In 1995 respondent sent a notice to petitioner, the Administrator, and the relevant Illinois authorities, alleging, accurately, as it turns out, that petitioner had failed since 1988, the first year of EPCRA's filing deadlines, to complete and to submit the requisite hazardous-chemical inventory and toxic-chemical release forms under ''11022 and 11023. Upon receiving the notice, petitioner filed all of the overdue forms with the relevant agencies. The EPA chose not to bring an action against petitioner, and when the 60-day waiting period expired, respondent filed suit in Federal District Court. Petitioner promptly filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) and (6), contending that, because its filings were up to date when the complaint was filed, the court had no jurisdiction to entertain a suit for a present violation; and that, because EPCRA does not allow suit for a purely historical violation, respondent's allegation of untimeliness in filing was not a claim upon which relief could be granted.

The District Court agreed with petitioner on both points. The Court of Appeals reversed, concluding that citizens may seek penalties against EPCRA violators who file after the statutory deadline and after receiving notice. We granted certiorari.

We granted certiorari in this case to resolve a conflict between the interpretation of EPCRA adopted by the Seventh Circuit and the interpretation previously adopted by the Sixth Circuit in *Atlantic States Legal Foundation, Inc. v. United Musical Instruments, U.S. A., Inc.*, 61 F.3d 473 (1995)Ba case relied on by the District Court, and acknowledged by the Seventh Circuit to be factually indistinguishable, Petitioner, however, both in its petition for certiorari and in its briefs on the merits, has raised the issue of respondent's standing to maintain the suit, and hence this Court's jurisdiction to entertain it. Though there is some dispute on this point, see Part III, infra, this would normally be considered a threshold question that must be resolved in respondent's favor before proceeding to the merits. Justice Stevens's opinion concurring in the judgment, however, claims that the question whether '11046(a) permits this cause of action is also jurisdictional, and so has equivalent claim to being resolved first.

. . .

[W]e arrive at the threshold jurisdictional question: whether respondent, the plaintiff below,

has standing to sue. Article III, Section 2 of the Constitution extends the judicial power of the United States only to "Cases" and "Controversies." We have always taken this to mean cases and controversies of the sort traditionally amenable to and resolved by the judicial process. Such a meaning is fairly implied by the text, since otherwise the purported restriction upon the judicial power would scarcely be a restriction at all. Every criminal investigation conducted by the Executive is a "case," and every policy issue resolved by congressional legislation involves a "controversy. These are not, however, the sort of cases and controversies that Article III, §2, refers to, since the Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts. Standing to sue is part of the common understanding of what it takes to make a justiciable case.

The "irreducible constitutional minimum of standing" contains three requirements. First and foremost, there must be alleged (and ultimately proven) an "injury in fact," a harm suffered by the plaintiff that is "concrete" and "actual or imminent," not "conjectural or hypothetical. " Second, there must be causation, a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. And third, there must be redressability, a likelihood that the requested relief will redress the alleged injury. This triad of injury in fact, causation, and redressability comprises the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the burden of establishing its existence.

We turn now to the particulars of respondent's complaint to see how it measures up to Article III's requirements. This case is on appeal from a Rule 12(b) motion to dismiss on the pleadings, so we must presume that the general allegations in the complaint encompass the specific facts necessary to support those allegations. The complaint contains claims "on behalf of both [respondent] itself and its members." It describes respondent as an organization that seeks, uses, and acquires data reported under EPCRA. It says that respondent "reports to its members and the public about storage and releases of toxic chemicals into the environment, advocates changes in environmental regulations and statutes, prepares reports for its members and the public, seeks the reduction of toxic chemicals and further seeks to promote the effective enforcement of environmental laws." The complaint asserts that respondent's "right to know about [toxic chemical] releases and its interests in protecting and improving the environment and the health of its members have been, are being, and will be adversely affected by [petitioner's] actions in failing to provide timely and required information under EPCRA." The complaint also alleges that respondent's members, who live in or frequent the area near petitioner's facility, use the EPCRA-reported information "to learn about toxic chemical releases, the use of hazardous substances in their communities, to plan emergency preparedness in the event of accidents, and to attempt to reduce the toxic chemicals in areas in which they live, work and visit." The members' 'safety, health, recreational, economic, aesthetic and environmental interests' in the information, it is claimed, "have been, are being, and will be adversely affected by [petitioner's] actions in failing to file timely and required reports under EPCRA."

As appears from the above, respondent asserts petitioner's failure to provide EPCRA information in a timely fashion, and the lingering effects of that failure, as the injury in fact to itself and its members. We have not had occasion to decide whether being deprived of information that is supposed to be disclosed under EPCRA, or at least being deprived of it when one has a particular plan for its use, is a concrete injury in fact that satisfies Article III. And we need not reach that question in the present case because, assuming injury in fact, the complaint fails the third test of standing, redressability.

The complaint asks for (1) a declaratory judgment that petitioner violated EPCRA; (2) authorization to inspect periodically petitioner's facility and records (with costs borne by petitioner);

(3) an order requiring petitioner to provide respondent copies of all compliance reports submitted to the EPA; (4) an order requiring petitioner to pay civil penalties of $25,000 per day for each violation of "11022 and 11023; (5) an award of all respondent's costs, in connection with the investigation and prosecution of this matter, including reasonable attorney and expert witness fees, as authorized by Section 326(f) of [EPCRA]"; and (6) any such further relief as the court deems appropriate. App. 11. None of the specific items of relief sought, and none that we can envision as appropriate under the general request, would serve to reimburse respondent for losses caused by the late reporting, or to eliminate any effects of that late reporting upon respondent.

The first item, the request for a declaratory judgment that petitioner violated EPCRA, can be disposed of summarily. There being no controversy over whether petitioner failed to file reports, or over whether such a failure constitutes a violation, the declaratory judgment is not only worthless to respondent, it is seemingly worthless to all the world.

Item (4), the civil penalties authorized by the statute, see '11045(c), might be viewed as a sort of compensation or redress to respondent if they were payable to respondent. But they are not. These penalties are the only damages authorized by EPCRA and are payable to the United States Treasury. In requesting them, therefore, respondent seeks not remediation of its own injury, but reimbursement for the costs it incurred as a result of the late filing – but vindication of the rule of law – the "undifferentiated public interest" in faithful execution of EPCRA. This does not suffice. . . . By the mere bringing of his suit, every plaintiff demonstrates his belief that a favorable judgment will make him happier. But although a suitor may derive great comfort and joy from the fact that the United States Treasury is not cheated, that a wrongdoer gets his just desserts, or that the nation's laws are faithfully enforced, that psychic satisfaction is not an acceptable Article III remedy because it does not redress a cognizable Article III injury. Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.

Item (5), the "investigation and prosecution" costs "as authorized by Section 326(f)," would assuredly benefit respondent as opposed to the citizenry at large. Obviously, however, a plaintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit. The litigation must give the plaintiff some other benefit besides reimbursement of costs that are a byproduct of the litigation itself. An "interest in attorney's fees is insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim." Respondent asserts that the "investigation costs" it seeks were incurred prior to the litigation, in digging up the emissions and storage information that petitioner should have filed, and that respondent needed for its own purposes. The recovery of such expenses unrelated to litigation would assuredly support Article III standing, but the problem is that '326(f), which is the entitlement to monetary relief that the complaint invokes, covers only the "costs of litigation." 8 '11046(f). Respondent finds itself, in other words, impaled upon the horns of a dilemma: for the expenses to be reimbursable under the statute, they must be costs of litigation; but reimbursement of the costs of litigation cannot alone support standing.

The remaining relief respondent seeks (item (2), giving respondent authority to inspect petitioner's facility and records, and item (3), compelling petitioner to provide respondent copies of EPA compliance reports) is injunctive in nature. It cannot conceivably remedy any past wrong but is aimed at deterring petitioner from violating EPCRA in the future. The latter objective can of course be "remedial" for Article III purposes, when threatened injury is one of the gravamens of the complaint. If respondent had alleged a continuing violation or the imminence of a future violation, the injunctive relief requested would remedy that alleged harm. But there is no such allegation here--and on the facts of the case, there seems no basis for it. Nothing supports the requested injunctive relief

except respondent's generalized interest in deterrence, which is insufficient for purposes of Article III.

The United States, as amicus curiae, argues that the injunctive relief does constitute remediation because "there is a presumption of [future] injury when the defendant has voluntarily ceased its illegal activity in response to litigation," even if that occurs before a complaint is filed. This makes a sword out of a shield. The "presumption" the Government refers to has been applied to refute the assertion of mootness by a defendant who, when sued in a complaint that alleges present or threatened injury, ceases the complained-of activity. It is an immense and unacceptable stretch to call the presumption into service as a substitute for the allegation of present or threatened injury upon which initial standing must be based. To accept the Government's view would be to overrule our clear precedent requiring that the allegations of future injury be particular and concrete. "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief if unaccompanied by any continuing, present adverse effects." Because respondent alleges only past infractions of EPCRA, and not a continuing violation or the likelihood of a future violation, injunctive relief will not redress its injury.

Having found that none of the relief sought by respondent would likely remedy its alleged injury in fact, we must conclude that respondent lacks standing to maintain this suit, and that we and the lower courts lack jurisdiction to entertain it. However desirable prompt resolution of the merits EPCRA question may be, it is not as important as observing the constitutional limits set upon courts in our system of separated powers. EPCRA will have to await another day.

The judgment is vacated and the case remanded with instructions to direct that the complaint be dismissed.
