

**Scott v. City of Hammond**  
**741 F.2d 992, 996 (7th Cir. 1984), cert.**  
**denied, 469 U.S. 1196 (1985)**

Lake Michigan Plaintiffs alleged that EPA had a mandatory duty under section 303(d) to promulgate TMDLs for Lake Michigan if the State failed to do so. In this case, the States had not identified any water-quality limited segments or established any TMDLs for Lake Michigan. That fact, coupled with EPA's admission that no TMDL submissions had been made, in the Court's view "raise[d] the possibility that the [S]tates ha[d] determined that TMDLs for Lake Michigan [were] unnecessary." The Court of Appeals remanded the case to the District Court for a finding whether the States had "refused" to act. "[S]tate inaction amounting to a refusal to act" would be interpreted as a constructive submission of no TMDL, thus triggering EPA's duty to approve or disapprove such submission and to promulgate the TMDL itself (in the event of a disapproval). On remand, Illinois, Indiana, and Michigan submitted determinations that TMDLs were unnecessary for Lake Michigan; Wisconsin identified four areas for TMDL development. EPA approved the State determinations in 1985. In a subsequent case (National Wildlife Federation v. Adamkus, 1991 U.S. Dist. LEXIS 4037 Ill. Mar. 27, 1991) plaintiffs contended that insufficient TMDL activity by States bordering Lake Michigan constituted a constructive submission of no TMDLs and that EPA was required to approve or disapprove the submission. The court rejected the plaintiffs' contention because the Lake Michigan States had made actual submissions in 1985 which EPA approved, thus precluding a finding of constructive submission.