

royalties owing under the Agreement. Only Count V of the Complaint is relevant to this motion; it stated, in part, that:

On or about August 29, 1997 [RAC] was served with a 60 day Notice of Intent to sue Pursuant to Federal Clean Water Act and Pennsylvania Clean Streams Law. . . . The 60 Day Notice alleges violation of Federal and State laws by discharge of Pollutants without a permit and without treatment from the Porter Tunnel into the water of the Wiconisco Creek on a continuing basis over the past 5 years. . . .Kocher is required by the Agreement to comply with all laws, Federal and State, with regard to the Subject Premises. . . . Kocher is responsible for the correction and abatement of the alleged discharge of pollutants from the Porter Tunnel as alleged in the 60 Day Notice of August 27, 1997. . . . RAC is entitled to indemnification from Kocher for any expenditures required to be made by RAC in defending any citizens' action brought against RAC pursuant to the 60 Day Notice. Wherefore, RAC respectfully requests that this Court enter Judgment in its favor and declare that Kocher is responsible for bringing the discharge into the Porter Tunnel into compliance with all laws, Federal and State, as well as any fines arising from non-compliance with said laws, and also indemnifying RAC for any and all expenditures made in defending the 60 Day Notice and Citizens Action, including, but not limited to fines, attorneys fees and costs.

Kocher removed the Complaint to this court, asserting that RAC's request for injunctive relief established federal subject matter jurisdiction. 28 U.S.C. § 1441 (a). RAC now seeks remand pursuant to 28 U.S.C. § 1447 (c), as well as costs and fees. Id.

III. DISCUSSION

Diversity of the parties is not alleged, and the dispositive question is whether Count V of RAC's Complaint brings this case within the Court's federal question jurisdiction, Franchise Tax Bd. v. Laborers Vacation Trust, 463 U.S. 1, 8 (1983), that is, whether it "aris[es] under the Constitution, laws or treaties of the United States," 28 U.S.C. § 1331, a question that also determines the Court's jurisdiction under the removal statute. 28 U.S.C. § 1441 (b); Merrell Dow Pharmaceuticals Inc. v. Thompson, 106 S.Ct. 3229, 3232 (1986). Kocher contends that the Complaint satisfies each of the familiar tests for determining the existence of federal question jurisdiction. I disagree.

Initially, I find that Count V of the well-pleaded Complaint does not expressly seek relief under federal law. Franchise Tax Bd., 463 U.S. at 9-10, citing Taylor v. Anderson, 234 U.S. 74, 75-76 (1914); Joyce v. RJR Nabisco Holdings Corp., 126 F.3d 166, 171 (3d Cir. 1997). Simply put, the law that creates the cause of action is Pennsylvania contract law. The question then is whether a "substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims, or [whether] . . . the . . . claim is really one of state law." Franchise Tax Bd., 463 U.S. at 13 (internal quotation marks deleted).

The Complaint does not allege that intervening federal law -- i.e., the Clean Water Act -- has significantly modified a material term of the 1967 Agreement between the parties. Cf., e.g., Mountain Fuel Supply Company v. Johnson, 586 F.2d 1375 (10th Cir. 1978). Plaintiff seeks a declaration that, under Pennsylvania contract law, Kocher is still responsible to uphold both Pennsylvania and federal law, but federal law is not alleged to have altered the fact of either party's responsibilities under Pennsylvania contract law, nor did the parties agree to leave open the meaning of any term of the Agreement, subject to the vicissitudes of federal law. The conjecture that a determination of Kocher's responsibilities as a matter of Pennsylvania contract law may oblige Kocher to follow applicable federal laws does not support the conclusion that the Court would be required to consider or apply federal law when evaluating the Complaint. Thus, it cannot be said that RAC's "right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties," as no right under the federal Clean Water Act is an essential element of Reading's cause of action. 463 U.S. at 11. Accordingly, I also reject Kocher's contention that Reading has omitted to plead a necessary federal question, that is, application of the Clean Water Law. Id. at 22.

Moreover, under the well-pleaded complaint doctrine, federal jurisdiction cannot be based solely on whether the Clean Water Act or any federal law becomes relevant to Kocher as a defense against liability if and when its contractual duties are declared under Pennsylvania law. Merrell Dow, 106 S.Ct at 3232; Franchise Tax Bd. , 463 U.S. at 13. I also reject as meritless the assertion that this case falls within the "narrow exception" to the well-pleaded complaint doctrine under which "federal law so completely preempts an entire area of law that the state cause of action is entirely displaced by federal law." See Joyce, 126 F.3d at 171.

Further, Skelly Oil Co. v. Phillips Petroleum Co. does not help Defendants, because the nature of the action for which RAC seeks a declaration is a classic state law claim. 339 U.S. 667, 672 (1950). Finally, I disagree with Kocher that Public Service Comm'n v. Wycoff Co., 344 U.S. 237 (1952), supports federal jurisdiction over the Complaint. The Wycoff court noted that "[w]here the complaint in an action for declaratory judgment seeks in essence to assert a defense to an impending or threatened state court action, it is the character of the threatened action and not of the defense, which will determine whether there is federal question jurisdiction . . ." Id. at 248. Not only was this statement dicta, see First Nat. Bank of Eastern Arkansas v. Taylor, 907 F.2d 775, 776 n. 3 (8th Cir.

1990), Wycoff is procedurally inapposite to this case. As is clear from the sentences following the one quoted by Kocher, in Wycoff it was the "declaratory defendant" which posed the threat of future litigation potentially involving a federal question, not, as here, a third party seeking enforcement of state and federal laws. Id.; see also Franchise Tax Bd., 463 U.S. at 19 n. 19.

Accordingly, I find that Count V does not support the exercise of federal jurisdiction, and that the Complaint in its entirety must be remanded to the Court of Common Pleas for Schuylkill County. I will also deny RAC's request for costs and fees.

An Order follows.

