

Petroleum Contamination Litigation: Federal Court Addresses Request for Declaratory Judgment Related to Future Remediation Costs



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The U.S. District Court for the District of Oregon (“Court”) addressed a request for declaratory judgment by plaintiff landowners concerning future remedial action costs related to a petroleum release. See *Roger Goldingay, v. Progressive Casualty Insurance Company & Chevron U.S.A. Inc.*, No. 3:17-CV-1491-SI, 2018 WL 3689899, at *1 (D. Or. Aug. 3, 2018).

The Court granted a motion for judgment on the pleadings in favor of co-defendants Chevron and Progressive.

The real property at issue was owned by a married couple and housed several food carts on the lot. *Goldingay*, 2018 WL 3689899, at *1. Defendant Progressive (and before that Chevron) owned an adjacent property that was uphill from the food carts and where—at some point previously—a petroleum bulk plant had allegedly been operated. *Id.* After purchasing the food cart plot, plaintiffs had an environmental assessment conducted that determined the food cart property’s groundwater was contaminated with petroleum. *Id.* at 2. Defendants subsequently declined plaintiffs’ request for reimbursement of costs incurred from having the food cart property sampled and analyzed for contaminants. *Id.*

The plaintiffs’ claim was based on an Oregon law allowing for the reimbursement of remedial action costs for the cleanup of hazardous materials. *Goldingay*, 2018 WL 3689899, at *3.

In its decision, the Court holds for defendants stating:

1. It was too soon to conclude that the defendants would not comply with an Oregon Department of Environmental Quality (“ODEQ”) enforcement order demanding the contamination at the uphill site be cleaned, and;
2. Even if defendants failed to comply with an enforcement order, there was no evidence that ODEQ would require plaintiffs, then, to undertake those remedial actions. *Goldingay*, 2018 WL 3689899, at *4.

The Court also disagreed with the plaintiffs’ claims that there would be future remedial costs regardless of the defendants’ compliance. *Goldingay*, 2018 WL 3689899, at *4. The tentative and indefinite status of these potential costs was not sufficient for the plaintiffs to obtain standing and a subsequent declaratory judgment. *Id.* at 5.

Because of these reasons, defendants' motion for partial judgment on the pleadings was granted.
Goldingay, 2018 WL 3689899, at *6.

A [copy of the opinion](#) can be found here.