

Cobalt Contamination/Leased Facility: Federal District Court Addresses Motion to Dismiss Cost Recovery Action



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The United States District Court for the Northern District of California (“Court”) addressed in a November 18th Order a cost recovery action involving cobalt contamination. See *Quantum Labs, Inc. v. Maxim Integrated Prods. Inc.*, No. 18-cv-07598-BLF, 2019 WL 6117481 (N.D. Cal. Nov. 18, 2019).

Simon Planck and Quantum Labs, Inc. (“Quantum”) (collectively “Plaintiffs”) filed an action against Maxim Integrated Products Inc. (“Maxim”) and Tunc Doluca, Maxim’s CEO, (collectively “Defendants”) alleging excessive cobalt concentrations discovered at a Quantum facility that Maxim was utilizing.

The dispute arose out of a transaction in which Hyperion Group, Inc. (“Hyperion”) agreed to provide research and development services to Maxim at a Quantum facility that Maxim leased. Routine sampling of wastewater discharged from the Quantum facility in June 2014 indicated the presence of cobalt. Subsequent testing indicated cobalt concentrations well above the CAL/OSHA permitted levels. Maxim had to close its operations at the Quantum facility.

Cobalt concentrations at the facility were alleged to remain unusually high at the facility.

Quantum asserted eleven causes of action due to the cobalt contamination. In a subsequent Amended Complaint, Quantum asserted eight causes of action. Maxim moved to dismiss four of these claims:

1. Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”) cost recovery;
2. Resource Conservation and Recovery Act (“RCRA”) imminent and substantial endangerment;
3. Fraud; and
4. Waste.

CERCLA provides private parties the ability to recover the costs for cleanup of hazardous substances in certain circumstances from “potentially responsible parties.” A CERCLA claim requires that, among other things, the plaintiff establish that a “release” or “threatened release” of a “hazardous substance” from a facility occurred. “Release” is defined in CERCLA as “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.” The term “environment” is defined as:

(A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States. . .; and

(B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States”

Quantum and Planck argued that they fit within the scope of these terms by alleging that the Defendants:

1. allowed ‘cobalt-laden wastewater’ to exit the confines of the Quantum facility ‘subject to leaking from sewer conveyances by way of leaching and discharges in cracks and misaligned joints while in route to the sanitary sewer treatment works’ and
2. ‘abandoned the cobalt contaminated equipment’ and ‘Cobalt Contaminants were deposited on all surfaces inside the vacuum chamber, in the lab housing of the Temescal unit (hearth evaporator), and in other areas of the Quantum Facility.’”

The Court disagreed. It concluded that the contaminants did not amount to a “release” or “threatened release” as defined by CERCLA. Further, the Quantum facility was not encompassed by the CERCLA term “environment.” The inability to sufficiently allege a release or threatened release into the environment led the Court to dismiss the CERCLA claim.

With respect to the RCRA claim, Maxim argued that Quantum had failed to allege an “imminent and substantial endangerment to health and the environment”—a required element of a RCRA claim. Because Quantum asserted only that present concentrations may present an imminent and substantial endangerment, Maxim argued that the allegation was too speculative. The court disagreed and denied Maxim’s motion to dismiss the RCRA claim.

The Plaintiffs’ fraud claim, like its CERCLA claim, was dismissed by the court. The alleged fraudulent misrepresentation was made by Maxim to Mr. Planck in his representative capacity rather than in his individual capacity. However, Planck asserted the claim in his individual capacity. Thus, the court dismissed the claim.

The waste claim was dismissed without discussion by the court.

A copy of the order can be downloaded [here](#).