

# PCB Contamination/Cost Recovery Act: Federal District Court Dispute Over Responsibility



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The United States District Court for the Western District of Missouri (“Court”) addressed an issue arising out of the investigation and remediation of a release of polychlorinated biphenyls (“PCBs”) and other constituents. See *Substation K, Inc. v. Kansas City Power & Light Co.*, 2020 WL 3039127 (W.D. Mo. 2020).

A current and prior property owner disputed which was responsible for the contamination.

Plaintiff Substation K, a media production company, owned property Kansas City, Mo. The company filed a Federal District Court action to recoup expenses incurred from its investigation and cleanup of PCBs. The action was filed against Kansas City Power & Light Co. (KCP&L [since renamed “Evergy”]) which formerly owned the property.

The plaintiff brought claims pursuant to the private action provisions of three federal environmental statutes:

1. Toxic Substances Control Act (“TSCA”), codified as 15 U.S.C. §§ 2601–97 (1976);
2. Resource Conservation and Recovery Act (“RCRA”), codified as 42 U.S.C. §§ 6901–92k (1976), and;
3. Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), codified as 42 U.S.C. §§ 9601–75 (1980).

The property had been owned by the defendant since the early 1900s. During its ownership it developed an electric streetcar facility. The facility closed in 1946.

Defendant sold the property to a printing company in 1959. As part of the streetcar facility and printing company operations, electrical equipment was continuously present on the property. The equipment included transformers and a hydraulic lift.

At some point, electrical equipment on the property released PCBs into the soil and groundwater. PCBs were present in the equipment as a fireproof dielectric fluid. What specific equipment was the source of the released PCBs and when this occurred were key points of contention.

Defendant filed a Motion for Summary Judgment. The plaintiff was argued to lack sufficient evidence to bring the claims.

As a threshold issue, the defendant first argued that the plaintiff lacked evidence showing that PCBs were used or released during the defendant's ownership of the property. The Court disposed of this contention finding that the plaintiff had presented ample evidence to withstand summary judgment on this point. This included evidence refuting the defendant's implausible expert testimony and soil samples tainted with a PCB commonly used in the type of transformers on the property.

Defendant also argued that the plaintiff's claims should fail because it did not own or operate the specific electrical equipment that allegedly released the PCBs on the property. The Court noted that this assertion cut against the plain language of RCRA. It stated that the defendant "cite[d] no law supporting its proposition that it cannot be in violation under the RCRA because it did not own or operate the electrical equipment that allegedly released PCBs even though it owned the property at which the electrical equipment was installed and operated." Therefore, the Court found this argument unpersuasive.

The defendant further argued that it could not be liable under the RCRA because it "did not itself use or dispose of any hazardous or solid waste at the property." The Court acknowledged that there was "no binding precedent" on this issue. However, it noted courts in other jurisdictions had found that parties' "passive inaction or ownership of property served as grounds for liability for contributing to contamination." Therefore, summary judgment on this point was unwarranted.

Finally, the defendant argued that the plaintiff could not establish that conditions at the property pose an "imminent and substantial danger to health or the environment" as required to incur liability under RCRA. Defendant relied on a separate case involving coal dust contamination to claim that "an imminent and substantial endangerment must be proven through expert testimony." The Court found their reliance misplaced, stating:

This case is not about coal dust.

It ruled that an expert's testimony was not required to demonstrate imminent and substantial environmental danger under these circumstances.

Defendant's Motion for Summary Judgment was denied in its entirety.

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