RCRA Cost Recovery Action/Underground Storage Tank: Federal Court Addresses Scope of the Term Owner

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A United States District Court (N.D. California) ("Court") addressed in a December 16th opinion issues arising out of a railroad's lawsuit to recover remediation costs pursuant to the Resource Conservation and Recovery Act ("Act") related to a former lessee's underground storage tank ("UST") release. See *Union Pacific Railroad Company v. Hill*, 2021 WL 5964595.

Two of the questions the Court considered included:

(1) Does lack of present ownership of a UST negate a cause of action pursuant to RCRA; and

(2) Does voluntary participation in a self-funded state remediation program preclude a defendant from being concurrently sued under the RCRA statute?

Union Pacific Railroad Company ("Union Pacific") owns property in San Jose, California. Various other related entities and individuals (collectively "Defendants") are described as being involved in activities on the leased property.

A.R. Bodenhamer leased property from the railroad. The lessee company was operated by Robert Hill. Hill also conducted operations on the property as an officer and director of Privette Inc.

The property was used to manufacture chemical toilets and conduct activities using chemicals. Chemicals were used in activities such as degreasing, stripping, and priming. The activities included use of and maintenance of USTs.

The San Jose Fire Department identified a UST on the property that it considered an "explosion hazard." The UST was subsequently removed. No sampling for possible released contamination was conducted upon the removal of the UST. The property is stated to have been contaminated through the Defendants' use of various chemicals.

Union Pacific filed suit seeking cost recovery, declaratory and injunctive relief, contribution or indemnity, damages, and punitive damages. One of the causes of action sought injunctive relief and costs of litigation under RCRA, 42 U.S.C. §§ 6972(a)(1)(A) (referenced as "Subsection A") and 42 U.S.C. §§ 6972(a)(1)(B) (referenced as "Subsection B").

Hill and Privette ("H&P") filed a motion to dismiss both RCRA claims.

H&P argued that Hill did not own the property. Therefore, they asserted that H&P could not be held liable under Subsection A of RCRA as an "owner." RCRA Subsection A provides that an action can be undertaken "against any person… who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA." 42 U.S.C. § 6972(a)(1)(A). However, the relevant RCRA UST regulations provide that liability attaches to "all owners and operators of a UST system." 40 C.F.R. § 280.10(a).

The Court notes the two-part definition of a UST "owner."

First, the regulations cover "any person who owns a UST system in use on November 8, 1984 or brought into use after that date." See Id. § 280.12. Second, for "any UST system in use before November 8, 1984," the regulations are applicable to "any person who owned such UST immediately before the discontinuation of its use."

The Court expressed its belief that Congress intended to impose UST regulatory responsibility on past tank owners in certain circumstances, not just present owners. Since Hill admitted to using the UST on or after November 8, 1984, the Court held Hill to be an owner within the meaning of the statute.

The Court also concluded that ownership status is not controlled by the removal of a UST from the property. Instead ownership turns on when the UST was in use. Further, the Court explained that timing of a UST's leak, removal of the UST, and the defendant's abandonment of the property in which the UST is used are all irrelevant in negating or establishing the defendant's liability pursuant to this RCRA provision.

The Court then analyzed RCRA Subsection B. Subsection B allows a citizen to file suit "against any person… who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B). Therefore, pursuant to Subsection B, Union Pacific had to show "imminent and substantial endangerment" coming from the action or inaction of the defendant. The Court explained that these terms have been construed liberally.

Hill responded that he participated in a voluntary, self-funded state remediation program. Therefore, he argued that there was no imminent endangerment to health or the environment. However, the Court found this argument unsound, concluding that remedial activities do not necessarily preclude a simultaneous federal suit. Remedial action alone was deemed to not always moot the endangerment caused by a defendant's actions.

The Court therefore denied Hill's motion for summary judgment as to the RCRA claims.

A copy of the Opinion can be found here.