

Citizen Suit Action/RCRA: Federal Court Addresses Applicability to Agency Supervised Site Remediation



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The United States District Court for the District of New Jersey (“Court”) addressed in a June 25th Opinion an issue arising out of a Resource Conservation and Recovery Act (“RCRA”) citizen suit action. *See Raritan Baykeeper, Inc. v. NL Indus., Inc.*, No. CV 09-4117 (MAS) (JTQ), 2024 WL 3162933 (D.N.J. June 25, 2024).

The questions considered included whether injunctive relief and contribution were appropriate at a site being addressed pursuant to state environmental agency supervision.

Before the Court were two opposing Motions for Summary Judgment. One from Raritan Baykeeper, Inc. and Edison Wetlands Association, Inc. (“EWA”) (collectively “Plaintiffs”). The other was filed by NL Industries, Inc. and NL Environmental Management Services, Inc. (collectively “Defendants”).

Plaintiffs had filed a RCRA citizen suit action against Defendants. Imposition of RCRA liability requires proof of three elements:

1. That the defendant is a person, including, but not limited to, one who was or is a generator or transporter of solid or hazardous waste or one who was or is an owner or operator of a solid or hazardous waste treatment, storage, or disposal facility;
2. That the defendant has contributed to or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste; and
3. That the solid or hazardous waste may present an imminent and substantial endangerment to health or the environment. See 43 U.S.C. § 6972(a)(1)(B).

Defendants sought summary judgment against Plaintiffs’ RCRA claim. Plaintiffs sought summary judgment on the first and second elements of their claim.

Defendants in the 1930’s acquired 440 acres of land on a peninsula abutting the Raritan River (“Site”). They operated a titanium dioxide production facility until 1982. The New Jersey Department of Environmental Protection (“NJDEP”) classified the site as a “waste treatment, storage, and disposal . . . facility.”

The facility had obtained a permit to discharge wastewater from its production facility into the Raritan River. The wastewater was treated prior to discharge. The details and effectiveness of this treatment were disputed by Plaintiffs.

Defendants' use of the site ceased in 2000. They subsequently began an environmental investigation into site conditions. Concentrations of arsenic, copper, lead, and zinc exceeding the NJDEP ecological screening level criteria were identified in the depositional areas along the Raritan River. A 2002 investigation yielded the same results.

NJDEP concluded in 2004 that additional investigations of the Site by the Defendants were not yet appropriate. The agency determined that any remedial actions by Defendants would have little effect at this point.

NJDEP began investigating the site. Additional sampling was conducted which continued to identify metals in the soil.

NJDEP informed Defendants in 2022 that "condition have changed." They were "required to address contamination of the Raritan River" and retain a Licensed Site Remediation Professional ("LSRP") to perform remediation. Defendants agreed to the request and submitted routine reports regarding the status of the investigations.

Defendants submitted a Remedial Investigation Work Plan ("RIWP") to NJDEP prior to Plaintiff filing the citizen suit action. NJDEP had however, not determined when the remediation plan would take effect. The citizen suit was subsequently filed.

To succeed on a Motion for Summary Judgment, the movant must show that there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(a)*. If a fact is disputed, the motion will be denied.

In addressing Defendants' motion for summary judgment, the Court held that disputed facts did exist. They had argued that in fulfilling their regulatory obligations and LSRP's oversight of remediation meant that the injunction relief that Plaintiff sought was already acquired.

The Court noted that NJDEP had not yet deemed remediation as necessary. Therefore, there was no remediation plan underway. There was a genuine dispute of fact as to whether the RIWP's submission to NJDEP and the agency actually ordering remediation was the same relief. Thus, summary judgment was held not proper, as a trier of fact would have to determine this question.

The Court also addressed the RCRA contribution issue.

Defendants argued that Plaintiffs could not connect their waste to any alleged endangerment, as required to impose RCRA liability. They addressed the word "which" found in the statutory language of RCRA. "Which" was argued to imply that the second and third elements of the RCRA are actually one and the same, rather than two distinct elements (i.e., "inextricably intertwined").

The Court rejected this argument. It held that the test is whether the Plaintiffs can provide evidence to meet their burden for both the second and third elements of their RCRA claim. Plaintiffs were held to have met that burden. Defendants' Motion for Summary Judgment failed on both arguments, as there were disputed facts that could only be resolved at trial.

Plaintiffs' motion related to the first two elements of their claim: that (1) the Defendants were "persons" who generated or owned a hazardous waste producing facility and (2) that the Defendants contributed to the handling, storage, treatment, transportation or disposal of hazardous waste.

The Court concluded that these facts were undisputed. Defendants clearly met both of these elements, as they owned and operated the site in question, and did discharge the hazardous waste.

The only question remaining was the third element, which requires that Defendants' hazardous wastes have caused imminent and substantial endangerment to health or the environment. Thus, only that third element could proceed to a trier of fact in a trial.

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

