

CERCLA/Superfund Action: Federal Court Addresses Owner/Operator Issue



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A United States District Court (Eastern District of California) addressed in a June 27th decision an issue involving the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”) terms “Owner” and “Operator.” See *City of West Sacramento et. al. v. R and L Business Management, et. al.*, No. 2:18-cv-900 WBS EFB.

The question presented in the context of a motion to dismiss was whether sufficient facts were pled to establish CERCLA direct or presumed ownership or operator liability on two individuals’ own actions.

The City of West Sacramento, California and State of California (“Plaintiffs”) filed a lawsuit against a corporation, its past shareholders, and others related to the management of a West Sacramento property. The Complaint alleged that the owners were responsible for contaminating the soil and groundwater during the operation of a now closed metal plating facility. It further alleged that the contamination resulted from numerous spills, leaks, and through the disposal of hazardous material from the metal plating facility.

The causes of action pled included CERCLA and other statutory actions, along with common law claims.

The facility operated from the 1950’s to 1985. It is stated to have received numerous Notices of Noncompliance for elevated levels of heavy metals from the Yolo County Department of Health.

Defendants Sharon and Richard Leland (“Defendants”) were described by Plaintiffs as “individuals, former owners, operators, officers, directors, and/or shareholders of Capitol Plating, a metal plating business that operated at the property from 1961 to at least 1985, and current owners, officers, directors, and/or shareholders of R and L Business Management.”

In response to the CERCLA count, the Defendants (Lelands) argued one of the necessary statutory elements for liability was absent. Specifically, they stated that sufficient facts were not pled to establish that the Defendants (Lelands) were owners or operators. Consequently, they filed a motion to dismiss.

To establish a CERCLA claim, a plaintiff must demonstrate that the hazardous site is a facility; a hazardous substance has been released from the facility; the release of a hazardous substance caused the plaintiffs to incur costs necessary for clean up; and that the defendants are within the class of potentially responsible parties. The CERCLA liability category in this action involved ownership or operation of the facility at the time of the disposal of the hazardous substances.

The Court granted the Defendants' motion to dismiss the CERCLA owner liability claim. It held that the Plaintiffs did not provide enough facts to establish they were owners. Simply establishing an individual is a shareholder in the company and owned the facility was stated to not constitute CERCLA ownership. The Court also granted Defendants' motion to dismiss the CERCLA operator liability claim. It concluded that insufficient facts were shown that the shareholders (i.e., Defendants/Lelands) were involved in directing or managing the facility.

The Court also dismissed Resource Compensation and Recovery Act, Gatto Act, Porter-Cologne Water Quality Control Act, and various common law claims. However, the Court granted the Plaintiffs leave to amend their Complaint.

A [copy of the opinion](#) can be downloaded below.