

CERCLA/RCRA Cost Recovery Action: Federal Court Addresses Individual Liability Question



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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Co-Author: Claire Maddox

A United States District Court (Eastern District of California) (“Court”) addressed in a September 4th opinion the potential liability of an individual under the federal Resource Conservation and Recovery Act (“RCRA”) and Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). See *City of West Sacramento, California; and People of the State of California v. R and L Business Management*, No. 2:18-cv-900 WBS EFB, 2018 WL 4204799 (E.D. Ca. 2018).

The Court assessed whether there was a basis for his individual liability because of his ownership and interest in companies that were also defendants (Stockton Plating, Inc., Capitol Plating, Inc., and R and L Business Management).

The City of West Sacramento, California and the People of the State of California (collectively “Plaintiffs”) initiated an action against defendant Richard Leland (“Leland”) and others in relation to what is described as contamination in the environment within the City.

The Plaintiffs’ original complaint alleged the following causes of actions against Leland:

1. Resource Conservation and Recovery Act § 7002(a), 42 U.S.C. § 6972(a)(1)(B);
2. Comprehensive Environmental Response, Compensation and Liability Act § 107(a), 42 U.S.C. § 9607(a);
3. Gatto Act, California Health & Safety Code §§ 25403-25403.8;
4. Porter-Cologne Water Quality Control Act, Cal. Water Code § 1304(c);
5. public nuisance;
6. trespass;
7. negligence;
8. ultra hazardous activity;
9. statutory indemnity; and
10. declaratory relief.

Leland filed a Motion to Dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

The Plaintiffs asserted that Leland fits within the CERCLA terms “owner” or “operator” under CERCLA and RCRA. As such they argued Leland could be liable individually under the cost recovery provisions of these statutes. An additional basis for individual liability was the assertion that the Court should pierce the corporate veil. In other words, they proposed holding Leland individually liable for the purportedly wrongful acts of Stockton Plating, Inc., Capitol Plating, and R and L Business Managements, all of which were California corporations that were also named defendants.

In assessing whether Leland is individually liable under CERCLA or RCRA as an operator, the Court notes that an officer must have:

. . . “actually participated in the operations of the facility” or “actually exercised control over, or was otherwise intimately involved in the operations of, the corporation immediately responsible for the operation of the facility.”

The Court held that the Plaintiffs failed to allege specific facts demonstrating that Leland was an operator of the facility under CERCLA.

The Court cites language from the original complaint which asserted liability because Leland:

. . . used, handled, stored, treated, transported, and/or disposed of, or arranged for others to do so, or exercised substantial influence and control over the use, handling, storage, transport, and/or disposal of the Contaminants at the property.

The Complaint had been subsequently amended to add that Leland also:

. . . ordered, directed and arranged for the removal and disposal of plating equipment and chemicals.

The combined allegations were deemed by the Court too general to withstand a Motion to Dismiss. Further, Leland personally signing a lease where the contamination occurred was deemed to not demonstrate he participated in the disposal of hazardous substances or exercised authority over such activities.

As to the veil piercing argument, Plaintiffs alleged that each defendant, including Leland, “was the alter ego of the corporate entity that operated during their relevant time period at the Property because, inter alia, of their controlling interests in the corporation, their complete dominance and control over the corporation, such that no separateness or individuality between them and the corporation existed.”

The Plaintiffs’ third through eighth claims were all state law claims that required the plaintiff to prove that Leland owned or operated the facility, or that he created the alleged contamination. The Court held that the Plaintiffs failed to allege such facts.

In regards to the Plaintiffs’ request for declaratory relief, the Court held that the plaintiffs had not adequately alleged a CERCLA claim, and therefore, declaratory relief was unavailable.

Therefore, Leland’s Motion to Dismiss Plaintiff’s First Amended Complaint was granted.

[A copy of the opinion](#) can be found here.