CERCLA Liability: Federal Appellate Court Addresses Whether Current Owner Can Be Responsible for Pre-acquisition Cleanup Costs

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The United States Court of Appeals for the Third Circuit ("Court") addressed in an October 5th opinion a Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") liability issue. See *Pa. Dep't of Envtl, Prot. v. Trainer Custom Chem., LLC,* 906 F.3d 85 (3rd Cir. 2018).

The question addressed was whether the owner of property could be liable under CERCLA or the Pennsylvania Hazardous Substances Sites Cleanup Act ("HSCA") for environmental cleanup costs incurred prior to its acquisition.

Trainer Custom Chemical, LLC ("Trainer") acquired a property known as the Stoney Creek Site ("Site") after the Pennsylvania Department of Environmental Protection ("DEP") had incurred environmental cleanup costs at the Site. The amount that had been expended at that point was $818,000.

The Site had been used primarily for making corrosion inhibitors, fuel additives, and oil additives. The County had forced a sale of the Site, and Trainer became the owner.

Trainer demolished many of the land's structures.

In June 2014, DEP ("Plaintiff") received two reports noting environmental concerns. The reports stated active demolition, several storage tanks cut open and unknown contents were spilling on the ground. Further, the building sites had asbestos-containing materials that needed to be removed before demolition.

Plaintiff sued Trainer and its two individual owners under CERCLA and HSCA to recover costs incurred in cleaning up the Site.

CERCLA grants states the right to recover costs incurred in cleaning up releases of hazardous substances from four broad classes of persons who may be held strictly liable. The relevant class here is, "the owner or operator of a facility."

HSCA is the state counterpart to the CERCLA. Similarly, the HSCA defines classes of persons who are legally liable stating, "a current owner is strictly liable for environmental response costs, including those incurred by the Commonwealth of Pennsylvania."

Liability interpretations under CERCLA were deemed by the Court as relevant to determining responsibility under the HSCA.

The Court found that Trainer is the owner of the Site. As a result, it was at a minimum liable for environmental response costs incurred after ownership. However, the Court also considered whether the meaning of "all costs" as stated in §107(a) of CERCLA includes response costs incurred before Trainer acquired the Site.

The Court found that a current owner may be liable for all response costs, whether incurred before or after acquiring the property.

The term "all costs" does not distinguish between costs that were incurred before ownership and afterwards; therefore, Trainer was deemed liable under CERCLA and the HSCA for removal costs on the Site regardless of when the costs were incurred.

A copy of the opinion can be found here.