

# CERCLA/RCRA Cost Recovery Action: U.S. District Court Addresses Potential Liability of an Individual



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The United States District Court for the Eastern District of California (“Court”) addressed in a November 16th Memorandum and Order (“Order”) the liability of an individual under certain federal and state environmental statutes. See *City of West Sacramento, California, et al. v. R and L business Management, et al.*, No. 2:18-cv-900 WBS EFB.

The City of West Sacramento, California (“City”) and the People of the State of California (collectively “Plaintiffs”) filed an action against an individual (“Leland”) asserting the following causes of action:

1. Violation of the Resource Conservation and Recovery Act (“RCRA”);
2. Violation of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”);
3. Violation of The Gatto Act, California Health & Safety Code §§ 25403-25403.8;
4. Statutory Indemnity; and
5. Declaratory Relief and Costs Incurred in Response to Soil and Groundwater Contamination at and Around Certain Property.

Leland was one of a number of defendants for whom the action was filed against to address what was described as toxic levels of soil and groundwater contamination in the environment within the City.

Leland moved to dismiss the Complaint in full.

The Plaintiffs argued that Leland qualified as an “operator” under both CERCLA and RCRA. As a result, they asserted that he was liable for his individual conduct in causing the alleged contamination.

The Order notes that CERCLA defines “owner or operator” as:

... any person owning or operating such facility but excludes any person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect a security interest in the vessel or facility. 42 U.S.C. § 9601 20(A)(ii).

The Order further cites *United States v. Bestfoods* referencing language in the CERCLA operator context which requires that to be encompassed by the definition one must:

... manage, direct, or conduct operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations.

The Ninth Circuit Court of Appeals is cited as stating that operator liability extends to any party with “authority to control the cause of the contamination at the time the hazardous substances were released into the environment.”

Plaintiffs relied on three separate allegations to support a theory that Leland was liable as an operator. They included:

1. Leland was responsible for approving purchase orders for chemicals and supplies, arranging for delivery of the chemicals and supplies, and creating invoices for the plating operation at the Property;
2. Leland was responsible for waste permitting and environmental compliance, which include obtaining permits for the transportation of hazardous materials; and
3. Leland’s authority to lease the property suggests he had authority to control the source of contamination.

The Court states the first two allegations are based on information and belief. As a result, the Court states that conclusory allegations asserted on such a basis are insufficient to state a claim. The Complaint is held to have not detailed any of the factual predicates to support Plaintiffs’ conclusion that Leland was responsible for environmental compliance or that he arranged for delivery of chemicals to the property.

The Court also concludes that Leland’s status as a lessee of the property does not support a theory of operator liability. It references a previous observation that such an allegation:

. . . does not demonstrate that Leland participated in the disposal of hazardous wastes or that he “had the authority to control the cause of contamination at the time the hazardous substances were released into the environment.”

Citing *Bestfoods* the Court states that execution of a lease does not necessarily imply control of operations specifically related to pollution.

The Court, therefore, grants Leland’s Motion to Dismiss the CERCLA and RCRA claims based on operator liability.

The state law claims are also held to be deficient as the Plaintiffs failed to allege facts indicating Leland owned or operated the facility or created the alleged contamination. In addition, because of the absence of a valid claim for recovery under CERCLA, declaratory relief is stated to be unavailable.

Leland’s Motion to Dismiss is granted.

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