



South Carolina Court Limits CERCLA Remedies

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The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) allows the federal government to collect funds from or to order a “potentially responsible party” (“PRP”) to clean up contaminated sites. 42 U.S.C.A. §9601 to 9675 (1988), as amended. A PRP that has incurred necessary costs to remediate a contaminated site can file a claim for cost recovery under CERCLA Section 107(a) to recover all of its costs from other PRPs or can file a contribution claim to require them to pay their equitable share of the costs under Section 113(f). Federal courts across the country have been split as to whether a PRP could bring both a direct claim under Section 107 and a contribution claim under Section 113.

In *PCS Nitrogen v. Ross Development Corporation*, 2015 BL 134503, D.S.C. No. 14-cv-4252 (May 5, 2018), a South Carolina federal judge recently held that, where a PRP can satisfy the pleading requirements of both a cost recovery claim and a contribution claim, it is limited to only a contribution claim. In the *Ross* case, PCS Nitrogen (PCS) performed remedial activities under a CERCLA Section 106(a) Unilateral Administrative Order (UAO) issued by EPA. The UAO ordered PCS to clean up the site. PCS sought to recover its cleanup costs pursuant to both Section 107(a) and Section 113(f). The Court held: (1) PCS was permitted to bring a 107(a) cost recovery claim because it incurred “necessary” response costs; and (2) PCS was permitted under CERCLA to bring a 113(f) contribution claim because the UAO was the functional equivalent of a civil action under Section 106. Finally, the Court ruled that PCS could not do both, holding that whenever a party may properly bring a contribution action, it is precluded from bringing a cost recovery action as well. It is uncertain whether other federal courts will follow South Carolina’s lead. In the meantime, PRPs are likely to continue to include both cost recovery and contribution causes of action in their lawsuits to heighten the chance of fully recovering their response costs.

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