Asphalt Roof Shingles/Remediation: Federal Court Addresses Whether RCRA Citizen Suit Limited by State Court Settlement

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The United States District Court for the Northern District of Texas ("Court"), in a March 26th Opinion addressed issues involving a Resource Conservation and Recovery Act ("RCRA") citizen suit action, 42 U.S.C. § 6972(a)(1)(B). See Jackson v. Blue Star Recycling, LLC, No. 3:20-CV-00967-M, 2021 WL 1164827 (N.D. Tex. Mar. 26, 2021).

The RCRA citizen suit was filed against CCR Equity Holdings One, LLC ("CCR One"), Cabe Chadick, a member of CCR One, Blue Star Recycling, LLC ("Blue Star"), and the City of Dallas, Texas ("City") ("Defendants") regarding the storage of a large pile of asphalt roof shingles.

RCRA regulates the treatment, storage, and disposal of solid and hazardous waste. The citizen suit provision provides that any person has the ability to initiate a civil action on his or her own behalf if the following elements are established:

1. The defendant is a person, including, but not limited to, one who was or is a generator of solid or hazardous waste, or one who was or is an owner or operator of a solid or hazardous waste treatment, storage or disposal facility;
2. The defendant has contributed to, or is contributing to, the handling, storage, treatment, transportation, or disposal of solid or hazardous waste; and
3. The solid or hazardous waste may present an imminent and substantial endangerment to human health or the environment.

See 42 U.S.C. § 6972(a)(1).

CCR One and Almira Industrial and Trading Corp. ("Almira") leased adjacent parcels of land to Blue Star for it to use as a shingle recycling facility. Plaintiff, Marsha Jackson, lives in a home that neighbors this facility. She alleged that the roof shingles stored on the aforementioned properties were improperly stored.

The City brought a suit in state court against Defendants and Almira.

Plaintiff initiated this action in federal court against Defendants in April 2020. The claim asserted included a RCRA citizen suit against the City and alleged disparate treatment under the Fourteenth Amendment of the U.S. Constitution pursuant to 42 U.S.C. § 1983. Defendants, with the exception of Blue Star, filed a Motion to Dismiss.

A settlement was reached between the City and CCR One in the state court action. The state court ordered that CCR One remove all solid waste from its property. CCR One, Chadick, and the City supplemented the initial Motion to Dismiss in the federal case to account for this development. The supplemental Motion to Dismiss argued that the final judgment in the state court action rendered Plaintiff's RCRA claims in this case moot.

Plaintiff argued that the final judgment of the state court in the initial action did not address certain issues – therefore not rendering her RCRA claim moot because it does not:

1. address remediation of the alleged damage to her property, and
2. eliminate the industrial zoning or take further action to ensure that the site is never used for illegal storage of solid waste again.

The Court held that, in order to have RCRA standing she would have had to suffer an injury.

Plaintiff alleged that the dust from Shingle Mountain blew onto her property. However, she made no allegation in the Amended Complaint that the dust on her property would result in her imminent and substantial endangerment. Her allegation that the substantial endangerment caused by the poor air quality was determined to have been properly addressed by the state court when it ordered that the waste be removed from the site. Therefore, the Court found that the final judgment in the state court matter sufficiently resolved the allegations made in the Amended Complaint.

The Court also found that it had no authority to order the re-zoning of the site under 42 U.S.C. § 6972(a)(1)(B). Plaintiffs are not able to limit the future use of a site. RCRA claims may also only address existence of solid waste presenting an imminent and substantial endangerment to human health or the environment. The possibility of future use is beyond the scope of a plaintiff's purview under the RCRA citizen suit provision because "imminent" refers to harms that are believed to occur immediately.

Plaintiff acknowledged certain issues were addressed by the final judgment of the state court. However, she argued the case was not moot because:

1. the shingles have not been fully removed despite the court's order to do so, and there is no provision that guarantees sufficient cleanup, and
2. there is no provision that covers the possibility that an eventual Environmental Site Assessment ("ESA") will reveal that the site remained contaminated.

The Court notes that claims have been dismissed prior to the completion of a mandated cleanup. See W. Coast Home Builders, Inc. v. Aventis Cropscience USA Inc., 2009 WL 2612380, at *4 (N.D. Cal. Aug. 21, 2009); Northern California River Watch v. Fluor Corporation, 2014 WL 3385287, at *9 (N.D. Cal. July 9, 2014); Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co., 704 F.3d 413, 431 (5th Cir. 2013). The cleanup ordered by the state court is stated to cover the current and ongoing cleanup issues. Further, the final judgment required that the cleanup and disposal of the shingles be undertaken in a way that comports with federal, state, and local law. The Court found that the claim regarding the Environmental Site Assessment ("ESA") claim was not ripe because the Plaintiff must bring such action if, and when, that event actually transpires. An ESA had not been conducted. Therefore, Plaintiff must initiate any related action once the results of that assessment have been issued.

The Court grants the supplemental Motion to Dismiss on behalf of CCR One, Chadick, and the City, and dismisses Plaintiff's RCRA claims.

A copy of the Opinion can be downloaded here.