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Refinery/CERCLA: Federal Appellate Court Addresses Whether United States Controls During World War II Established it as an Operator

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The United States Court of Appeals for the Sixth Circuit ("Sixth Circuit") addressed in a June 23rd Opinion the scope of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") term "operator." See *MRP Properties Company, LLC v. United States*, 2023 WL 4141227.

The question considered was whether the United States exercised sufficient control over certain privately owned refineries during World War II to be classified as a CERCLA operator.

Valero Energy Corporation and affiliates (collectively "Valero") own twelve refinery sites that were used during World War II to produce various petroleum products.

World War II caused acute shortages of many products and resources in the United States. Therefore, the country, through the President, exercised certain controls over various refineries during World War II. Manufacturing changes mandated by the federal government and a shortage of construction materials resulted in an increase in waste generation and spills at the refineries.

After World War II, environmental contamination was discovered at the Valero refineries. This included CERCLA hazardous substances. Valero expended funds remediating the contamination.

Valero through MRP Properties Company filed a CERCLA contribution action against the United States. They argued that the United States' significant control over various aspects of the refineries' operations during World War II placed it within the scope of the CERCLA term operator.

The activities regulated by the United States are stated to have included:

- Prioritizing customers
- Rationing crude oil
- Allocation of oil and refinery equipment
- Established wages and prices
- Changed manufacturing techniques

The United States District Court for the Eastern District of Michigan granted partial summary judgment to Valero. It held that:

“any reasonable juror would find that the United States operated each site during the war emphasizing that it controlled what and how much the refineries would produce during wartime.”

The United States filed an interlocutory appeal to the Sixth Circuit.

The Sixth Circuit notes “a facility’s current operators [may] seek contribution to pay for the remediation of the property from their predecessors.”

A CERCLA operator is defined to include:

... a person...operating [a] facility. Further, an operator is stated to direct the workings of, manage or conducts a facility’s affairs. See *U.S. v. Best Foods*, §24 U.S. 5th (1998) .

The Sixth Circuit further quotes *Best Foods*, stating:

...an operator 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 decision about compliance with environmental regulations.

The Sixth Circuit’s decision addresses whether precedent agreed with the United State’s or Valero’s definition of the CERCLA term “operator”. The specific question was whether the United States “conduct[ed] or manag[ed] operations specifically related to pollution.”

The Sixth Circuit holds that the United States was not a CERCLA operator at the Valero refineries for three reasons:

1. Despite the federal government’s overriding authority at the time, the refineries maintained control of how waste from production was managed.
2. Precedent held strongly in the federal government’s favor that it was not an “operator” of any mines or manufacturing plants at the time. The authority was strictly regulatory and had little involvement with mundane operations like waste management.
3. Objectively, it did not make sense to put this responsibility on the federal government. The Sixth Circuit phrased it, “a dose of common sense runs in the same direction.”

The Court issued an amended Opinion June 29th editing the last paragraph of the opinion. See *MRP Properties Company, LLC v. United States*, 72 F.4th 166, 2023 WL 4276571.

A copy of the Opinion can be downloaded [here](#).