



Walter Wright, Jr.

wwright@mwlaw.com
(501) 688.8839

Comprehensive Environmental Response Compensation and Liability Act/Cost Recovery: Federal Appellate Court Addresses Appropriate Cause of Action

08/06/2025

Co-Author Galesia Jackson

The United States Court of Appeals for the Sixth Circuit (“Court”) in a May 12th Opinion addressed issues arising out of actions being brought to recover cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). *See Georgia-Pacific Consumer Prods. LP, et al., v. NCR Corp.*, Nos. 24-1403/1404 (6th Cir. May 12, 2025).

The Court addressed the appropriate circumstances under which a private party can recover cleanup costs under § 107 and § 113 (f).

This case was previously before the Court and was remanded, the Court held that “the two statutory rights under §§ 107 and 113(f) are mutually exclusive, providing a cause of action to persons in different procedural circumstances.” On remand the District Court judge entered a declaratory judgment under § 107. Weyerhaeuser Company (“Weyerhaeuser”) and International Paper Company (“IPC”) appealed the District Court entry of declaratory judgment. IPC and Weyerhaeuser argued that the District Court erred in re-entering the declaratory judgment after the remand because the decision was contrary to law.

The facts which led up to the previous and current suit are as follows:

Georgia-Pacific and paper companies formed the Kalamazoo River Study Group (“KRS”) to address pollution along a 35 mile segment of the Kalamazoo River. The United States Environmental Protection Agency (“EPA”) added this area to the CERCLA National Priorities List. KRS’s members began incurring costs from cleaning the NPL site.

In 1995 KRS brought an action under § 107 to recover costs from Weyerhaeuser Company (“WC”) in United States District Court. The Court entered a judgment declaring the members of KRS liable for the cleanup costs at the NPL site. Two other judgments were entered in 2000 by the Court reiterating KRS members and Eaton corporation liability. It stated that KRS members were liable for “the entire cost of response activities relating to the NPL site.” The 2003 judgment confirmed the liability of KRS members for cleanup costs.

In 2010 Georgia-Pacific brought this lawsuit against NCR Corporation, IP, and Weyerhaeuser asserting claims under both §§ 107 and 113(f) for cleanup costs associated with the NPL site. The District Court in 2013 found both NCR and IP liable for costs. A 20-day trial was held in 2018, in which percentages of liability was apportioned to all parties:

- 40% to Georgia-Pacific.
- 40% to NCR.
- 15% to IP.
- 5% to Weyerhaeuser.

The Court entered an order to that effect pursuant to § 113(f).

IP and Weyerhaeuser appealed this decision arguing that the claim under § 113(f) was time barred. The Court agreed. The District Court on remand vacated the original judgment then reentered it under § 107 finding that IP, Georgia-Pacific, and Weyerhaeuser were liable for any additional costs incurred by any party at the NPL Site.

The Court conducted a de novo review of the proceedings making several major points.

First, Georgia-Pacific could not assert claims under both §§ 107 and 113(f) because they are mutually exclusive. Second, there had been a total of three judgments entered by 2003 that made Georgia-Pacific liable for all cleanup costs associated with the site. Thus, when a party is responsible pursuant to a legal judgment, subsequent costs are only recoverable under § 113(f). By 2010 Georgia-Pacific claims had been time barred. Section 113(f) provides two statutes of limitations: 3 years after the removal action and 6-years after the initiation of physical on-site construction of the remedial action.

The Court also rejected Georgia-Pacific's argument that the word "shall" mandated recovery. It stated that this interpretation overlooked the full statutory context, especially the reference to "an initial action for recovery of the costs referred to in section 9607 of this title." In other words, this was not an initial action and vacated the District Court's ruling. It opined that to follow Georgia-Pacific's argument would overturn established precedent regarding the relationship between §§ 107 and 113(f).

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