Litigation/CERCLA: Federal Appellate Court Addresses Whether Action Constitutes Cost-Recovery or Contribution

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The Tenth Circuit Court of Appeals ("10th Circuit") addressed an issue arising under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). *See Atl. Richfield Co. v. NL Indus., Inc.*, 132 F.4th 1220 (10th Cir. 2025).

The issue addressed was whether an action in the instance to recover clean up expenses constitutes a CERCLA cost recovery or contribution.

The two actions carry different periods of limitations.

The 10th Circuit upheld a mining company's claim to recoup part of its $63.7 million environmental cleanup costs from a previous mine owner. It found the claim most closely resembled a contribution action, as opposed to a cost-recovery action. Consequently, the 10th Circuit applied the statute of limitations for contribution actions. Therefore, it reversed the lower court's application of the statute of limitations for cost-recovery actions.

Factual Background

Defendant NL Industries' predecessors operated a silver mine in Rico, Colorado, from 1930 to 1941. The mining operation caused large amounts of sulfuric acid to leak into the Dolores River. Plaintiff Atlantic Richfield Company ("ARCO") took over the mining operation in 1943. Hazardous substances continued to leak into the Dolores River.

ARCO began remediating the site in 1983. However, sulfuric acid continued to be released.

The United States Environmental Protection Agency ("EPA") ordered ARCO to clean the site in 2011. ARCO sued NL Industries in 2020 to recover the cost of the cleanup. In 2021, while ARCO's case against NL Industries was ongoing, it settled its CERCLA liability with EPA.

ARCO agreed in the settlement to continue its cleanup of the Dolores River and pay EPA $400,000 for its oversight costs. This settlement prompted ARCO to amend its 2020 complaint against NL Industries from cost recovery to contribution. ARCO sought in the amended complaint contribution towards both the $63.7 million cleanup bill and the $400,000 payment to EPA.

NL Industries moved for summary judgment on the claim for contribution toward the $63.7 million cleanup bill. It asserted the claim was actually a cost-recovery claim. Therefore, it was argued to be time barred by the statute of limitations for cost-recovery claims under CERCLA. 42 U.S.C.A. § 9613(g)(2). NL Industries did not seek summary judgment on the claim involving contribution toward the $400,000 EPA payment.

The United States District Court (District of Colorado) held that the claim was a cost-recovery action. Therefore, it was time-barred. The District of Colorado granted partial summary judgment for NL Industries.

ARCO appealed to the 10th Circuit.

Legal Background

Whether summary judgment was properly granted against ARCO turns on whether ARCO's action is a cost-recovery action or a contribution action. Each action entails a different statute of limitations.

For cost recovery, an action must be brought within three years of completing the removal of the pollutant. 42 U.S.C.A. § 9613(g)(2) ("(g)(2)"). In the case of contribution, an action must be brought within three years of:

1. a cost-recovery judgment;
2. an administrative order relating to de minimis settlements;
3. an administrative order relating to cost-recovery settlements; or
4. a judicially approved settlement.

(Id. § 9613(g)(3) ("(g)(3)").

ARCO sought contribution "through an administrative settlement, which is not encompassed by either [(g)(2) or (g)(3)]." *Atl. Richfield Co. v. NL Indus., Inc*., 132 F.4th at 1227. "We thus lack any limitations period that would expressly apply." Id.

The 10th Circuit's Decision

The 10th Circuit applied the contribution statute of limitations under (g)(3). "Without an expressly applicable provision, we borrow the most closely analogous statute of limitations." Id. at 1228 (quotation omitted). It found "the nature of [ARCO's] action involves contribution, not cost recovery." Id.

Citing CERCLA's legislative history, the 10th Circuit noted "Congress apparently intended to establish a uniform period of limitations for all contribution actions" by creating separate limitations periods for each action. Id. "Given the nature of the action and the congressional design, any contribution claim is subject to the . . . statute of limitations in [](g)(3)." Id. at 1229 (quotation omitted).

Therefore, the 10th Circuit held ARCO had three years from entry of the administrative settlement in 2021 to sue for contribution. ARCO brought the contribution action in 2022. Consequently, the 10th Circuit deemed the contribution action timely under (g)(3).

A copy of the decision can be found here.