Cost Recovery Action/CERCLA: Federal District Court Addresses Arranger Issue

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A United States District Court ("Court") (D. Puerto Rico) addressed in a March 25th Opinion and Order ("Opinion") an issue arising under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). *See PROTECO Landfill Superfund Site Generator Parties Group v. MRJ Distributors, Inc., et al.*, 2026 WL 822438.

The issue addressed involved an interpretation of the Section 107(a)(3) of CERCLA language "arraignment for the disposal of hazardous substances."

The PROTECO Landfill Superfund Site Generator Parties Group ("GPG") brought a contribution action against Pepsi-Cola Manufacturing Co., Inc. ("PepsiCo") in an attempt to recover costs associated with the PROTECO site ("Site"). The Site is on the federal Superfund National Priorities List.

The Opinion indicates that the Site accepted hazardous waste from approximately 1975 to 1990.

GPG alleges that PepsiCo arranged for the disposal of hazardous substances at the Site. The waste alleged to have been sent by PepsiCo included lab packs, acid liquid, potassium benzoate, caffeine anhydrous, sodium benzoate, citric acid, sodium saccharin, sodium chloride, and other waste. This waste is stated to have been described by a Resource Conservation and Recovery Act ledger as "liquid hazardous and solid wastes."

PepsiCo filed a motion to dismiss arguing that GPG failed:

… to plead that Pepsi intended to dispose of a hazardous substance, as required by *Burlington Northern & Santa Fe Railway Co. v. United States*, 556 U.S. 599, 608–10 (2009), and its progeny.

PepsiCo also asked that the Court deny GPG's ability to amend its complaint.

PepsiCo, in support of its motion to dismiss, argued that GPG failed to plead facts that establish PepsiCo arranged for the disposal of hazardous substances because it failed to allege that Pepsi intended to dispose of any alleged hazardous substances, as is required under *Burlington Northern* and its progeny. It further argued that because it is alleged to be a CERCLA "arranger" that GPG must also allege proof that it actually intended to dispose of hazardous substance.

GPG also cites *United States v. Gen. Elec. Co.*, 670 F.3d 377 (1st Cir. 2012), arguing that a robust and fact-intensive analysis in [the case] demonstrates precisely why [p]laintiff's [c]omplaint here is deficient."

GPG responded that intent is not an element of this type of arranger case. Further, it argued that even if the Court were to adopt an intent standard, its Fourth Amended Complaint alleges sufficient facts to establish that PepsiCo knew, or should have known, the waste it sent to the Site contained hazardous substances. It also argued that PepsiCo's arguments were untimely.

The Court holds that the Fourth Amended Complaint is sufficiently well-plead to pass Rule 12(b)(6) muster. As required, in reviewing the complaint in the light most favorable to GPG, it held that the six required elements for a *prima facie* CERCLA section 107 case were pleaded:

1. that the"person" against whom recovery is sought is a "liable person" under section 107(a);
2. that there has been a release or threatened release;
3. of a hazardous substance;
4. from a facility resulting in;
5. the incurrence of necessary costs of response;
6. that are consistent with the NCP. 42 U.S.C. § 9607(a)(1)-(4)(B).

The Court further noted that GPG needs only to plead sufficient factual matter to state a claim that is plausible on its face. GPG was found to have sufficiently plead that PepsiCo arranged for the disposal of hazardous substance which is sufficient to state a claim for liability under Section 107 of CERCLA. The request for the Court to conduct a fact-intensive standard was rejected and noted that it instead might be applicable at the summary judgment stage.

PepsiCo's motion to dismiss is denied.

A copy of the Opinion can be found here.