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Negligence/RCRA Citizen Suit Action: Federal Court Addresses Applicability of Sovereign Immunity to New York State Department of Environmental Conservation

09/14/2026

The United States District Court (W.D. New York) ("Court") addressed in a September 10th Order issues arising out of remediation of hazardous substances at a New York superfund site. *See Donna De La Torre, et al., v. New York State Department of Environmental Conservation, et al.*, 2026 WL 2660064.

The issues addressed included whether claims against the New York State Department of Environmental Conservation ("NYSDEC") related to remediation activities were barred by the sovereign-immunity doctrine.

Eight individuals brought an action against two companies and NYSDEC alleging various claims related to the remediation of released trichloroethene ("TCE") at a facility in the Town of Gates, New York. NYSDEC listed the site in the Registry of Inactive Hazardous Waste Disposal Sites in New York in December 1987.

The site owner entered into a consent order with NYSDEC to preform remedial investigation and installed an extraction system. The extraction system removed contaminants from groundwater and soil, as an interim remedial measure. Off-site groundwater monitoring wells were also installed.

The site was referred to the New York State Superfund program in 2006 due to the site operators failing to:

- Perform a satisfactory remedial investigation.
- Address contamination.
- Maintain interim remedial measures.
- Prepare written reports.

Volatile organic compounds associated with the TCE leak are stated to have migrated to a nearby townhouse development called Hidden Valley, where the Plaintiffs owned real property.

NYSDEC is stated to have taken over the site and implemented what is denominated "an electric resistance heating remedial scheme", which was less costly than other remedial options. Nevertheless, testing indicated that the presence of TCE, benzene, and vinyl chloride soil vapor exceeding guidance values established by the New York State Department of Health continued.

NYSDEC identified several homes in Hidden Valley which included some or all of Plaintiffs' properties/former properties that require further soil vapor monitoring or mitigation.

The Plaintiff individuals filed an action in the Court seeking damages and injunctive relief citing two alleged causes of action:

1. A violation of the Resource Conservation and Recovery Act ("RCRA").
2. Common law negligence.

As to the RCRA claim, NYSDEC argued that the Second Circuit has expressly held that this provision does not unequivocally express Congress's intent to abrogate sovereign immunity and subject states to suit. In response, the Plaintiffs cited *Cox v. City of Dallas*, 256 F.3d 281 (5th Cir. 2001) to argue that the Eleventh Amendment does not bar their RCRA claim.

The Court distinguishes *Cox* because it involved the *Ex parte Young* exception, which provides that the Eleventh Amendment does not bar suits seeking prospective relief against state officials acting in violation of federal law because such action is not considered an action of the state.

Since no New York officials were named as defendants, the Court holds that the exception does not apply. Therefore, the Court concluded that the Eleventh Amendment bars Plaintiffs' RCRA claim as asserted against NYSDEC.

The Court also held that it lacked subject matter jurisdiction over Plaintiffs' common law negligence claim against NYSDEC. New York State did waive its sovereign immunity to common-law tort claims. However, such claims for damages must be brought in the New York State Court of Claims. Further, the State of New York has not waived its Eleventh Amendment immunity to suit in federal court for state common law and constitutional torts. Therefore, the Court holds that there is no subject matter jurisdiction over the Plaintiffs' request for damages on their negligence claim against NYSDEC.

A copy of the Order can be found [here](#).