

Federal Court Clarifies CERCLA Statute of Limitations

Long Beach Unified School District v. Santa Catalina Island Co.
2021 U.S. Dist. LEXIS 196636 (C.D. Cal. 2021)

In *Long Beach Unified School District v. Santa Catalina Island Co.*, 2021 U.S. Dist. LEXIS 196636 (C.D. Cal. 2021), a federal court held that CERCLA's six-year statute of limitations for "remedial" actions applied in a cost recovery action that followed the implementation of a remedial action plan approved by a California state agency.

In 2001, school district authorities discovered contaminated soil during a campus construction project. The district conducted a site investigation and submitted a remediation plan to the state Department of Toxic Substance Control (DTSC), calling for soil excavation and off-site disposal. DTSC approved the plan in 2005. In the years that followed, the district performed remediation and augmented the scope of the cleanup as it uncovered additional pockets of contamination. In 2019, DTSC approved a second remediation plan. That same year, the district filed its lawsuit for CERCLA cost recovery. The court's ruling addressed two issues of note.

First, the court considered whether the proper statute of limitations was the three-year period applicable to "removal" actions, or the six-year period for "remedial" actions. (See 42 U.S.C., § 9613(g)(2).) The court observed that, while the statutory language was "inescapably vague," caselaw provided some guidance. As interpreted by prior courts, "removal" actions refer to immediate actions to protect the environment, while "remedial" actions are permanent response actions. Applying this distinction, the court held that the cleanup costs were "remedial" in nature because they followed a DTSC-approved remediation plan that was intended to be a final and comprehensive cleanup remedy. Accordingly, the six-year limitations period applied.

The second issue was whether the limitations period restarted in 2019, after the DTSC approved the second remediation plan. The court observed that under the "single remediation principle," a site typically has only one remedial action, and approval of successive remedial action plans does not restart the limitations period. Applying that principle, the court held that DTSC's approval of the 2019 remediation plan – involving the same property and same constituents of concern – did not reset the limitations period.

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