

Tackling Scope of ‘Matters Addressed’ in CERCLA Settlements by Third Circuit

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Earlier this month, the U.S. Court of Appeals for the Third Circuit issued an opinion in N.J. Department of Environmental Protection (NJDEP) v. American Thermoplastics, No. 18-2865. It adds a new wrinkle on CERCLA Section 113(f)(2).

By Caleb J. Holmes | [October 8, 2020](#) | [The Legal Intelligencer](#)

Earlier this month, the U.S. Court of Appeals for the Third Circuit issued an opinion in *N.J. Department of Environmental Protection (NJDEP) v. American Thermoplastics*, No. 18-2865. It adds a new wrinkle on CERCLA Section 113(f)(2), which bars nonsettling parties from bringing claims for contribution against settling parties, while also placing new emphasis on CERCLA Section 104 cooperative agreements in the context of settlements.

The case involves the Combe Fill Superfund site, a landfill that operated from 1948 to 1981. From 1978 to 1981, the landfill was owned by Combustion Equipment Associates (CEA n/k/a Carter Day Industries) and run by its subsidiary, Combe Fill Corp. (CFC). CFC hired Compaction Systems Corp. to conduct operations at and transport hazardous materials to the landfill. In 1981, the site closed and CFC filed for Chapter 7 bankruptcy. The U.S. Environmental Protection Agency (EPA) and the New Jersey Department of Environmental Protection (NJDEP) filed claims, which were each settled for \$50,000. In 1980, CEA filed for Chapter 11 protection. NJDEP filed a claim, which the court disallowed because only CFC was liable for the costs for cleaning up the site under New Jersey law. USEPA did not file a claim. In 1986, Carter Day sought a judgment that the EPA’s and NJDEP’s claims related to the site were discharged in bankruptcy. The bankruptcy court dismissed the action against USEPA as unripe. The bankruptcy court subsequently approved a settlement entered into between Carter Day and NJDEP by which “all claims of NJDEP against Carter Day with respect to the Combe Fill sites” were discharged, and NJDEP was enjoined “from pursuing any claims against Carter Day with respect to the Combe Fill sites.”

Compaction, which in 2009 settled with the EPA and NJDEP, brought a Section 113(f) CERCLA contribution claim, among other claims, against Carter Day. To determine whether Carter Day’s prior settlement with NJDEP barred Compaction’s claim, the district court and the Third Circuit focused on whether the “matters addressed” in that settlement included both state and federal claims that could have been brought against Carter Day.

Under CERCLA section 113(f)(2), “a party who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement.” In 1997—well after the settlement at issue here was entered into—USEPA issued guidance regarding the “matters addressed” language in section 113(f)(2). As USEPA noted in that guidance, settling parties had until that point not defined “matters addressed” in settlements. This led to uncertainty regarding the contribution rights of non-settling parties. The EPA instructed settling parties to include a definition of “matters addressed” based on the facts of each individual case. That definition “should identify those response actions and costs for which the parties intend contribution protection to be provided.”

The settlement, entered into in the context of a bankruptcy and prior to USEPA’s 1997 guidance that directed settlements to include a “matters addressed” section in settlements, did not include a definition of “matters addressed.” The lack of a definition raised the question of whether the language encompassed federal claims, in addition to state claims. The parties agreed that, because it was a judicially-approved settlement that identified all NJDEP claims related to the site, that Compaction could not seek contribution of costs it paid to NJDEP (\$1.5 million out of \$11 million). The district court reasoned that because the language in the settlement agreement encompassed all of NJDEP’s claims related to the site, and because a settling party receives the same contribution protection whether it settles with a state or the United States, the settlement with NJDEP barred all costs sought in contribution by Compaction.

The Third Circuit reversed its decision. In considering the scope of the “matters addressed,” the court determined it must “interpret the matters addressed in an agreement narrowly when determining whether the settlement with one sovereign covers the claims of another.” This may be a novel interpretation. That said, the court determined that, although the settlement broadly covered remedial costs at the site, it was limited to claims by NJDEP. As further support, the Third Circuit noted that the settlement here was essentially just an acknowledgment by NJDEP that its claims were barred by the Carter Day bankruptcy, a case in which EPA was not involved. In addition, the court found that it would be inequitable to allow Carter Day to avoid liability, given that “USEPA bore the lion’s share of the site’s cleanup costs.”

The Third Circuit also had the benefit of documents related to a cooperative agreement entered into by NJDEP and EPA in 1983, which designated NJDEP as the lead agency for the site’s cleanup. Compaction only moved to supplement the record with these cooperative agreement-related documents on appeal. Pursuant to that cooperative agreement, the EPA was responsible for 100% of the costs of managing and performing the RI/FS and 90% of the cost of managing and performing the work in the remedial action, with NJDEP responsible for the other ten percent. The cooperative agreement “negated and denied” the authority of either party to “attempt to negotiate on behalf of the other.” The Third Circuit placed significant emphasis on the cooperative agreement, finding that because that cooperative agreement “reiterates the statutory allocation costs and states that the NJDEP cannot recover funds on behalf of the USEPA ... it defies reason and the plain language of the Cooperative Agreement that the matters addressed in the NJDEP Settlement with Carter Day could include expenditures incurred—per statute and contract—solely by the United States.”

This decision involves a fairly unique set of facts, but emphasizes the importance of being explicit when identifying the “matters addressed” in a settlement, especially when settling with one of two sovereigns that are incurring costs at a site. Settling private parties should not assume they have complete information about the relationship between sovereigns—and may be unaware of cooperative agreements like the one here. Negotiating a settlement under those circumstances highlights the need to be precise when drafting the “matters addressed.”

About the Author:

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