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Client Alert

Environmental Law & Litigation

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Parent Companies Providing Management Services to Subsidiary Held Liable as Facility 'Operator' Under the Clean Air Act

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On Feb. 17, the Eastern District of Michigan held, after a bench trial, that indirect parent companies of EES Coke Battery LLC (EES Coke) are strictly liable as 'operators' for Clean Air Act violations at EES Coke's facility.[1]

Background

EES Coke owns and operates a coke battery plant on Zug Island in Michigan (the Facility). In 2013 and 2014, EES Coke sought changes to its Clean Air Act permits, and these changes were approved by the Michigan Department of Environment, Great Lakes, and Energy.[2] In its 2014 permit application, EES Coke asserted that the proposed change did not constitute a "major modification" under the Clean Air Act with respect to sulfur dioxide and particulate matter emissions.[3]

In 2020, the United States Environmental Protection Agency (USEPA) issued a notice of violation, contending that the 2014 permit change was a major modification and, consequently, that EES Coke failed to comply with the Clean Air Act's New Source Review permitting program requirements for major modifications.[4] The New Source Review program generally prohibits the construction of new air pollution sources without ensuring that certain permit requirements are met and that significant deterioration of air quality in the relevant area is avoided.[5]

On June 1, 2022, the United States sued EES Coke.[6] It later amended the complaint to include EES Coke's indirect parent companies–DTE Energy Services Inc., DTE Energy Resources LLC, and DTE Energy Co. (collectively, the DTE Defendants)–asserting they separately were liable under the Clean Air Act as operators of the Facility.[7]

The district court granted summary judgment against EES Coke on liability, after which the case proceeded to a bench trial on the DTE Defendants' liability and potential remedies.

Analysis

The court held the DTE Defendants jointly liable as operators of the Facility, alongside EES Coke, under the Clean Air Act.

First, the court concluded the Clean Air Act broadly defines "owners and operators" to include "any person who owns, leases, operates, controls, or supervises a stationary source."[8] Seeking additional clarity, the court then turned to the Supreme Court's decision in *United States v. Bestfoods*, where it examined operator liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[9]

There, the Supreme Court held that "a parent corporation that actively participated in, and exercised control over, the operations of a subsidiary" may be held liable as an operator if the corporate veil is pierced.[10] In addition, if the parent company (as opposed to the subsidiary) "actively participated in, and exercised control over, the operations

of the facility", then the parent company could directly be liable as an operator.[11] Such participation and control, however, must "specifically relate to pollution."[12] Courts ultimately inquire into "actual control" and whether a parent "perform[ed] affirmative acts."[13]

The *EES Coke* court found that each of the indirect parent DTE Defendants exercised the requisite level of control for liability: (i) DTE Energy Services Inc. exercised direct operational control and by staffing all facility leadership positions;[14] (ii) DTE Energy Resources LLC controlled environmental personnel and actively directed compliance strategy and regulatory engagement;[15] and (iii) DTE Energy Co. controlled cash flow, financing, and capital expenditures such that the facility could not implement pollution controls without its approval.[16] Importantly, each of the DTE Defendants was involved at the Facility through a management services agreement that allowed it to provide services for the benefit of EES Coke.[17] The court further noted that EES Coke had no employees or bank account of its own, leaving the DTE Defendants to act "in the stead" of EES Coke.[18]

Potential implications

The district court's holding provides that parent companies can be deemed operators under the Clean Air Act even if they are providing services to a subsidiary pursuant to a services agreement. Said differently, while actions provided under a services agreement could be viewed as actions of the subsidiary (i.e., the actors are agents of the subsidiary through the services agreement), the court found that these actions are fairly attributable to the upstream parent companies. Companies should evaluate their services agreements between parents and subsidiaries and assess whether modifications relating to control and decision-making should be made to reduce the risk of upstream parent company liability.

If you have any questions about the Clean Air Act or its reporting obligations, please contact the authors of this article.

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[1] *United States v. EES Coke Battery, LLC*, No. 22-11191, 2026 WL 498640, at *19 (E.D. Mich. Feb. 17, 2026).
[2] *Id.*
[3] *Id.* at *3.
[4] *Id.* at *4.
[5] *Id.* at *2.
[6] *Id.* at *4.
[7] *Id.* at *1. EES is a subsidiary of DTE Coke Holdings LLC, which is in turn a subsidiary of DTE Energy Services, Inc. *Id.* at *9. DTE Energy Resources, LLC, and DTE Energy Company
[8] 42 U.S.C. § 7411(a)(5).
[9] *Id.* at *17 (citing *United States v. Bestfoods*, 524 U.S. 51, 55 (1998)).
[10] *Id.*
[11] *Id.* at *8 (emphasis added).
[12] *Id.* at *8.
[13] *Id.* (citation omitted).
[14] *Id.* at *9.
[15] *Id.*
[16] *Id.* at *10.
[17] Id. at *5-7.
[18] *Id.* at *4, *10.

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