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Client Alert

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Costs to Investigate Potential PFAS Contamination May Not Be "Necessary" Under CERCLA

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On March 11, the United States District Court for the Southern District of Indiana denied a property owner's motion for partial summary judgment on its Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)[1] Section 107 cost recovery claim.[2] The Court held that issues of fact remain as to whether the plaintiff's expenditures to investigate the potential presence of per- and polyfluoroalkyl substances (PFAS) were "necessary" response costs, as required under CERCLA Section 107, where the state regulator had not required PFAS investigation at the site.

Background

The case arises from historic contamination at a 5.5-acre industrial property in Indianapolis (Site). Defendant Battery Properties, Inc. (Battery) and its predecessors conducted manufacturing operations at the Site for approximately fifty years.[3]

In 1983, Battery sold the Site to CMW International, LLC (CMW), who continued manufacturing operations. Despite the sale, in 2000, Battery began to investigate and remediate hazardous substances at the Site, including volatile organic compounds (VOCs), under Indiana's Voluntary Remediation Program administered by the Indiana Department of Environmental Management (IDEM) ostensibly to take advantage of the statutory immunity to certain state causes of action provided to parties who enter that regulatory program.[4]

In 2023, CMW sold the Site to Plaintiff Graymor Properties LLC (Graymor) on an "as is, and where is" basis.[5] Before its purchase, Graymor conducted an environmental investigation that identified, among other things, the potential presence of PFAS contamination.[6] In response, Graymor submitted a "data gap investigation" work plan to IDEM that, among other things, would investigate potential PFAS impacts in soil and groundwater. IDEM approved the work plan.[7]

Graymor subsequently filed suit against Battery and CMW under CERCLA Section 107 (among other claims) to recover the costs it incurred investigating environmental contamination at the Site, including costs to investigate the potential presence of PFAS.[8] Graymor later moved for partial summary judgment that Battery and CMW were liable parties under Section 107.[9]

Analysis

To succeed on a CERCLA Section 107 cost recovery claim, a plaintiff must prove, among other things, that the costs it incurred were "necessary," which the Court defined as costs spent to "address a threat to human health or the environment."[10]

Graymor argued that its PFAS-related costs were necessary because IDEM issued a "technical approval" of Graymor's work plan to investigate PFAS at the Site.[11] Battery and CMW responded that Graymor's PFAS-related costs were voluntarily undertaken – and therefore not necessary – as IDEM never required Graymor to investigate PFAS.[12]

The Court denied Graymor's motion for partial summary judgment.[13] In reaching its conclusion, the Court found there were issues of fact as to the necessity of Graymor's PFAS-related costs.[14] The Court noted that the record contained (i) expert testimony from Graymor that neither federal nor state authorities had determined appropriate screening levels of PFAS, and (ii) IDEM's correspondence with Graymor indicating that PFAS could be addressed in a separate phase of the remediation, if at all.[15]

Potential Implications

For parties seeking cost recovery under Section 107 at sites where emerging contaminants such as PFAS may be present, this decision illustrates the importance of establishing "necessity" of incurred costs (and otherwise ensuring that the constituents at issue qualify as CERCLA "hazardous substances"). Explicit directives from environmental regulatory agencies, particularly where the state has not established screening levels or remediation standards for a given substance, may be required. A lack of such a directive may lead to a finding that costs incurred to address that constituent are not "necessary" for CERCLA cost recovery purposes.
For more information, please contact the authors of this client alert.

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[1] 42 U.S.C. § 9607.
[2] *Graymor Props. LLC v. Battery Props., Inc.*, No. 1:23-cv-00754-SEB-TAB, 2026 U.S. Dist. LEXIS 50015 (S.D. Ind. Mar. 11, 2026).
[3] *Id.*
[4] *Id.* at *12, *36-44 (discussing Battery's immunity to Indiana law statutory environmental causes of action).
[5] *Id.* at *10, *18.
[6] *Id.* at *18.
[7] *Id.* at *19.
[8] *Id.* at *19-20.
[9] *Id.* at *24.
[10] *Id.* at *30 (quoting *G.J. Leasing Co. v. Union Elec. Co.*, 854 F. Supp. 539, 561-62 (S.D. Ill. 1994), *aff'd*, 54 F.3d 379 (7th Cir. 1995)); *see* 42 U.S.C. § 9607(a).
[11] *Id.* at *32-33.
[12] *Id.*
[13] *Id.* at *35. The Court's opinion does not discuss whether Graymor could recover costs for PFAS other than PFOA and PFOS. At present, only those two PFAS compounds are listed as CERCLA "hazardous substances."
[14] *Id.* at *33-34.
[15] *Id.* at *34.

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