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Client Alert

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Recoverability of State Response Costs to Be Determined Under an Arbitrary and Capricious Standard of Review Limited to the Administrative Record

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On May 30, the United States District Court for the Central District of California determined that judicial review of whether state response costs are recoverable under Section 107(a)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)[1] should be based on an arbitrary and capricious standard of review limited to the administrative record.

Said differently, to rebut CERCLA's presumption that "all costs of removal or remedial action" are recoverable by the state, a defendant must show that the costs, based on the administrative record and using an arbitrary and capricious standard of review, are inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).[2]

Background

The court's decision pertains to the latest chapter in a long-running CERCLA dispute concerning a former lead battery recycling plant in Vernon, California. A bench trial is forthcoming on the issue of which of the state's response costs are recoverable under Section 107(a)(4)(A) of CERCLA. That section provides that a state shall recover "all costs of removal or remedial action … not inconsistent with the [NCP]."[3] A defendant requested that the court clarify the scope and legal standard of review that would be applied in evaluating the recoverability of the state's response costs under Section 107(a)(4)(A).

Standard of Review – Recoverability of Response Costs

The court determined it should apply an arbitrary and capricious standard of review based on the administrative record in determining whether the state's response costs are recoverable. In reaching this conclusion, the court determined that while CERCLA's statutory language does not expressly address this issue, the structure of CERCLA nevertheless shows that Congress intended an arbitrary and capricious standard of review based on the administrative record to apply for several reasons:

- *First*, Section 107(a)(4)(A) "suggests that courts should apply principles of administrative law when choosing their standard of review."[4] Per the language of the statute, the court must review a state's response action decision, and, the court reasoned, judicial review of agency decisions is typically limited to the administrative record.[5]
- *Second*, the court found that the "not inconsistent with the NCP" language in CERCLA "suggests an intent to give deference to a state agency's choice of response action."[6] An arbitrary and capricious standard of review provides this level of deference, while a *de novo* standard of review does not.[7]
- *Third*, the reference to the NCP in Section 107 "supports limiting judicial review to the administrative record" because the NCP requires that the state compile an administrative record for its selected response actions.[8]

- *Fourth*, CERCLA's decision to group the United States, states, and Native American Tribes together in Section 107(a)(4)(A) indicates the same deferential standard of review should be applied to all three categories of parties.[9] As Section 113(j) of CERCLA expressly provides that challenges to the United States' response action decisions are based on an arbitrary and capricious standard of review generally limited to the administrative record, the court found that the same standard applies to state response actions.[10]
- *Finally*, the court recognized that courts analyzing Section 107(a) prior to the enactment of Section 113(j) "consistently applied an arbitrary and capricious standard of review limited to the administrative record."[11]

The court also rejected the defense argument that because Section 113(j) expressly provides only a standard of review for response actions selected by the "President" and omits "States," a different standard of review should apply to state response actions (i.e., *de novo* review). Instead, the court determined Section 113(j) "says nothing about the operative question before the Court: what standard of review should the Court apply to response actions taken by the States."[12] Similarly, the court determined that the legislative history and purpose of Section 113(j) "supports the Court's conclusion that the state response actions are reviewed under an arbitrary and capricious standard of review."[13]

Potential Implications

The court's decision, if adopted in our jurisdictions, could significantly limit a defendant's ability to challenge the recoverability of a state's response costs under Section 107(a)(4)(A) of CERCLA. Notably, much of the court's reasoning relates to the standard of review that applies to challenges to the *adequacy* of a selected response action – an issue that is distinct from whether the costs incurred for that selected response action are inconsistent with the NCP and therefore recoverable.

To mitigate the risks associated with the court's decision, parties involved at state-led CERCLA sites should strategically bolster the administrative record with key information on both response action adequacy *and* the costs incurred by the state to perform the response action.

For more information, please contact the authors of this Client Alert.

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[1] 42 U.S.C. § 9601 *et seq.*
[2] 42 U.S.C. § 9607(a)(4)(A).
[3] *Id.*
[4] 2025 U.S. Dist. LEXIS 106521, at *41.
[5] 2025 U.S. Dist. LEXIS 106521, at *41.
[6] 2025 U.S. Dist. LEXIS 106521, at *42.
[7] 2025 U.S. Dist. LEXIS 106521, at *42.
[8] 2025 U.S. Dist. LEXIS 106521, at *42.
[9] 2025 U.S. Dist. LEXIS 106521, at *43-44.
[10] 2025 U.S. Dist. LEXIS 106521, at *44-45.
[11] 2025 U.S. Dist. LEXIS 106521, at *45.
[12] 2025 U.S. Dist. LEXIS 106521, at *48.
[13] 2025 U.S. Dist. LEXIS 106521, at *51-54.

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