

Environmental Law & Litigation

August 20, 2025

4th Circuit Holds Exposure to Contaminants Is a Sufficient Injury in Some Medical Monitoring Cases

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On Aug. 18, the U.S. Court of Appeals for the 4th Circuit held that exposure to ethylene oxide (EtO) constitutes a concrete, present injury sufficient for Article III standing where costs for present medical monitoring are sought.¹ The reasoning behind the holding, if followed in other jurisdictions, has the potential to increase the ability of toxic tort plaintiffs to seek medical monitoring costs in federal court based solely on alleged exposure to chemical substances.

Background

Plaintiff Lee Ann Sommerville (Plaintiff), on behalf of herself and a putative class, sued Defendants Union Carbide Corp. and Covestro LLC (Defendants) for alleged exposure to EtO.² Plaintiff alleged that a South Charleston, West Virginia, plant operated from 1978 to 2019—first by Union Carbide and then by Covestro—emitted EtO into the atmosphere. Plaintiff was exposed to EtO and consequently had an increased risk of developing certain diseases.³ Plaintiff brought a single claim against Defendants for medical monitoring under West Virginia common law.⁴

Defendants filed a motion for summary judgment. The District Court held that while West Virginia recognizes a medical monitoring claim, Plaintiff did not have a “manifest” physical injury attributable to her EtO exposure.⁵ As a result, Plaintiff lacked an Article III concrete and particularized “injury in fact” to establish standing and Defendants’ summary judgment motion was granted. Plaintiff appealed.⁶

Analysis

The Court of Appeals initially agreed with the District Court that Plaintiff must have a “present injury” to establish injury in fact for standing purposes.⁷ However, the Court of Appeals held that the District Court erred in characterizing Plaintiff’s present injury as an increased risk of developing disease as a result of her alleged exposure to EtO.⁸

In reversing the District Court, the Court of Appeals held that Plaintiff’s alleged present injury is the exposure to EtO itself, *not* the increased risk of future disease as a result of EtO exposure.⁹ That exposure and the consequential alleged “need to pay for medical testing today to mitigate an increased risk of illness” is sufficient to establish the injury-in-fact prong of Article III standing.¹⁰ Said differently, because Plaintiff brought suit for the current, not future, need for medical monitoring, the 4th Circuit held that her alleged exposure to EtO alone is enough.

In dissent, Chief Judge Albert Diaz characterized the majority’s reasoning as incorrectly “open[ing] the[] door to claims for damages, like [Plaintiff’s], in which the only claimed injury is the present need for medical monitoring.”¹¹ The proper application of relevant U.S. Supreme Court and 4th Circuit precedents, according to the

dissent, is that seeking medical monitoring costs now (as opposed to in the future) does not change the requirement that the underlying “injury” (i.e., the risk of developing disease) upon which such costs are based be nonspeculative and certainly impending.¹² As Diaz explained, “[b]ecause the underlying future harm is speculative, [medical] costs needed or incurred based on that harm can’t be an injury in fact.”¹³

Potential implications

The 4th Circuit’s decision may expand the ability of a plaintiff to bring claims for medical monitoring costs based solely on exposure to a chemical substance, regardless of whether the plaintiff has any physical manifest symptoms of disease or a risk of future disease that is certainly impending. For more information, please contact the authors of this Client Alert.

¹ *Sommerville v. Union Carbide Corp.*, No. 24-1491, 2025 U.S. App. LEXIS 21016 (4th Cir. Aug. 18, 2025).

² 2025 U.S. App. LEXIS 21016 at *2.

³ 2025 U.S. App. LEXIS 21016 at *2-3.

⁴ 2025 U.S. App. LEXIS 21016 at *3.

⁵ 2025 U.S. App. LEXIS 21016 at *3.

⁶ 2025 U.S. App. LEXIS 21016 at *3.

⁷ 2025 U.S. App. LEXIS 21016 at *7-8.

⁸ 2025 U.S. App. LEXIS 21016 at *8-9.

⁹ 2025 U.S. App. LEXIS 21016 at *14-15.

¹⁰ 2025 U.S. App. LEXIS 21016 at *15-16 (internal quotations omitted).

¹¹ 2025 U.S. App. LEXIS 21016 at *33.

¹² 2025 U.S. App. LEXIS 21016 at *34-35.

¹³ 2025 U.S. App. LEXIS 21016 at *36.

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