

Environmental Law & Litigation

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Court Holds Unilateral Administrative Orders Are Not ‘Civil Actions’ Under CERCLA

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On Sept. 20, the U.S. District Court for the Eastern District of New York held that unilateral administrative orders (UAOs) do not constitute “civil actions” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),¹ and therefore costs incurred to comply with a UAO are only recoverable through a CERCLA cost recovery claim.²

Background

In 2006, the New York State Department of Environmental Conservation (NYSDEC) brought a lawsuit against a series of parties under CERCLA to recover past and future response costs it had incurred and would incur investigating and remediating the New Cassel/Hicksville Groundwater Contamination Superfund Site (Site) in Hempstead and Oyster Bay, New York.³ In 2016, the court found Next Millennium Realty LLC and 101 Frost Street Associates, LP (collectively, Plaintiffs) liable under CERCLA.⁴ Plaintiffs then entered into a consent decree with NYSDEC as a result.⁵ Utility Manufacturing Co. Inc. and Nest Equities Inc. (collectively, Defendants) separately resolved their liability to New York for the state’s response costs in a 2015 settlement agreement.

In 2018, the U.S. Environmental Protection Agency issued a UAO to Plaintiffs and Defendants, which was amended in 2019, ultimately requiring the parties to implement another remedial investigation and a remedial design for a portion of the Site.⁶ Plaintiffs alleged they have incurred response costs at the Site to comply with the UAO but Defendants have not, and sought to recover those costs through both a CERCLA Section 107(a) cost recovery claim and a CERCLA Section 113(f)(1) contribution claim.⁷ Defendants filed a motion for judgment on the pleadings.⁸

Analysis

As an initial matter, the court acknowledged that CERCLA cost recovery and contribution claims provide “complementary yet distinct” relief.⁹ Reviewing decisions from other federal courts, the court held that if a party has a CERCLA contribution claim, that party cannot also assert a CERCLA cost recovery claim for the same costs.¹⁰

The court then evaluated whether receipt of a UAO constitutes a civil action under CERCLA, such that it triggers the recipient’s right to assert a CERCLA contribution claim (and bars a cost recovery claim).¹¹ Applying principles of statutory interpretation, the court concluded that a UAO is not a civil action under the meaning of Section 113(f)(1).¹²

In reaching that conclusion, the court relied on the plain language of Section 106, which authorizes the issuance of UAOs. Section 106 “distinguishes between two avenues of enforcement: by a lawsuit brought in federal district court or by taking ‘other action,’ such as an administrative order” (i.e., a UAO).¹³ As Section 113(f)(1) uses the phrase “civil action” and not any “action,” the court held that receipt of a UAO does not entitle the UAO recipient to contribution under CERCLA.¹⁴ The court also noted that the statute of limitations for CERCLA contribution claims

run from the date of either a “judgment” or a “settlement,” neither of which contemplates receipt of a UAO.¹⁵ Consequently, the court dismissed Plaintiffs’ CERCLA contribution claim for UAO compliance costs.¹⁶

The court next addressed whether costs incurred to comply with a UAO could be recovered through a CERCLA cost recovery claim.¹⁷ Although some precedent describes a Section 107 cost recovery claim as one to recover costs incurred “voluntarily,”¹⁸ the court held that “nothing in the plain language of § 107(a), Supreme Court, or Second Circuit authority requires a reading that the [party] incurred response costs ‘voluntarily.’”¹⁹ Further, barring Plaintiffs from recovering under both Section 113 for contribution and Section 107 for cost recovery “would be inconsistent with the statute’s purpose of ensuring that each party bears its fair share of cleanup costs and encouraging cooperation with government agencies.”²⁰ The Court thus held that Plaintiffs could assert a Section 107 cost recovery claim for UAO compliance costs.²¹

Potential implications

The District Court’s decision provides clarity that in the Eastern District of New York, costs to comply with a UAO are recoverable solely through a CERCLA Section 107 cost recovery claim, as opposed to a CERCLA Section 113 contribution claim. The court’s holding may incentivize parties to undertake cleanup under UAOs, forgoing opportunities to settle with the government, given the breadth of possible recovery, the longer statute of limitations, and the potential that such a CERCLA Section 107 action is not barred by CERCLA “contribution protection.”²²

For more information, please contact the authors of this client alert.

¹ 42 U.S.C. §§ 9601 *et seq.*

² *Next Millennium Realty LLC v. Util. Mfg. Co.*, No. 22-CV-02529, 2025 U.S. App. LEXIS 184943 (E.D.N.Y. Sept. 20, 2025).

³ 2025 U.S. App. LEXIS 184943 at *3-5.

⁴ *Id.* at *5-6.

⁵ *Id.* at *6.

⁶ *Id.* at *6.

⁷ *Id.* at *7-8.

⁸ *Id.* at *8-9.

⁹ *Id.* at *12 (quoting *United States v. Atl. Rsch. Corp.*, 551 U.S. 128, 138 (2007)).

¹⁰ *Id.* at *15.

¹¹ *Id.* at *16; see also 42 U.S.C. § 9613(f)(1) (“Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a).”).

¹² *Id.* at *17.

¹³ *Id.* at *18.

¹⁴ *Id.* at *19.

¹⁵ *Id.* at *20.

¹⁶ *Id.*

¹⁷ *Id.* at *22-23.

¹⁸ See, e.g., *Revitalizing Auto Communities Env’t Response Trust v. Nat’l Grid USA*, 92 F.4th 415, 439 (2d Cir. 2024) (“‘[other] person’ includes a PRP that voluntarily cleans the site.”) (internal quotations omitted).

¹⁹ 2025 U.S. App. LEXIS 184943 at *22. “The Court will not, as Defendants urge, ‘read[] words or elements into a statute that do not appear on its face.’” *Id.* (citing *Bates v. United States*, 522 U.S. 23, 29 (1997)).

²⁰ *Id.* at *23.

²¹ *Id.*

²² 42 U.S.C. § 9613(f)(2) (“A person 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.”).

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