



New York Extends Statute of Limitations for Superfund Site Tort Claims

Publication:

Riker Danzig Environmental UPDATE December 2016

The New York State Legislature recently passed a law allowing plaintiffs to pursue “personal damages” for injuries caused by “exposure to any substance or combination of substances contained within an area designated as a [S]uperfund site” under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) or New York’s Environmental Conservation Law within three years after the site’s designation. CPLR 214-f. Although characterized by its Assembly sponsors as a “narrowly tailored legal mechanism” in response to the highly publicized water contamination in the town of Hoosick Falls, the law could have broad and unpredictable effects. It is certain, however, to encourage litigation.

Prior to the passage of CPLR 214-f, the statute of limitations for personal injury claims arising from exposure to hazardous substances was governed by the interplay between New York's discovery rule, CPLR 214-c, and CERCLA's federally required commencement date, 42 U.S.C. § 9658. Under this scheme, plaintiffs were required to bring these claims either (1) within three years of discovery of the injury on which the claim is based (or within three years of the date the injury should have been discovered), or (2) within one year of discovering the cause of the injury, provided that scientific knowledge identifying the cause of the injury did not exist in the three years after the injury was discovered. In re Pfohl Bros. Landfill Litig., 26 F. Supp. 2d 512, 531 (W.D.N.Y. 1998), vacated on other grounds by Freier v. Westinghouse Corp., 303 F.3d 176 (2d Cir. 2002). The new statute discards this complex regime for personal injury claims arising from newly listed Superfund sites. While CPLR 214-f uses the enigmatic term "personal damages," the statutory heading demonstrates the Legislature's intent to extend the statute of limitations only for personal injury claims. Tort claims for damages to property, such as trespass and nuisance, from a Superfund site remain subject to the three-year discovery rule of CPLR 214-c. Jensen v. Gen. Elec. Co., 82 N.Y.2d 77 (1993).

CPLR 214-f presents thorny retroactivity questions. Plainly, claims arising from a site listed after the law's effective date will benefit from the extended statute of limitations. But will the statute apply retroactively to sites listed in the three years before CPLR 214-f was enacted? To answer this question, courts may be called upon to decide whether CPLR 214-f is a remedial statute designed to correct imperfections in existing law. City of New York v. LaserShip, Inc., 33 F. Supp. 3d 303, 315 (S.D.N.Y. 2014). If so, these prior listings also would be interpreted to extend the limitations period. Note, however, that if a plaintiff's claim would have been time-barred before passage of CPLR 214-f, the statute may be deemed unconstitutional as applied to such claims because of New York's limitations on "revival statutes" that resurrect an already time-barred claim. Although revival statutes for toxic tort personal injury claims have been upheld, Hymowitz v. Eli Lilly & Co., 73 N.Y.2d 487 (1989), courts are more skeptical of revival statutes benefitting plaintiffs who also could avail themselves of the CPLR 214-c discovery rule. In re World Trade Ctr. Lower Manhattan Disaster Site Litig., 66 F. Supp. 3d 466 (S.D.N.Y. 2014).

Putting aside questions of interpretation and validity, CPLR 214-f provides an additional incentive for aggrieved parties to have sites added to the federal National Priorities List ("NPL") or New York's state registry of Inactive Hazardous Waste Disposal Sites ("Registry"). Any person interested in having a site added to the Registry may provide relevant information to the New York Department of Environmental Conservation, which will add the site to the Registry if the site constitutes a significant threat to public health or the environment or if it is reasonably foreseeable that the site will pose such a threat in the future. 6 N.Y.C.R.R. § 375-2.7(b). While plaintiffs may seek to have a site added to the NPL or the Registry to take advantage of the limitations period under CPLR 214-f, parties facing the threat of litigation because of CPLR 214-f now have an additional incentive to remain off these lists and may even consider entering into New York's voluntary brownfield cleanup program, which defers a Registry listing.

6 N.Y.C.R.R. § 375-2.7(c).

In any event, potentially responsible parties should monitor federal and state Superfund listings for sites in New York because of the potential for tort law exposure under the new CPLR 214-f. New York courts' interpretation of the new law may have a significant effect on businesses affected by CERCLA and similar state laws, particularly if other states follow New York's lead and tie accrual of tort claims to regulatory listings as opposed to the plaintiff's discovery of an injury.

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