



# Does a Remediation Settlement with a State Protect Against Subsequent CERCLA Claims? Third Circuit Weighs In

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If a potentially responsible party settles its environmental liability with the State of New Jersey, or another state, might it still face liability in the future for costs incurred by the federal government? According to the United States Court of Appeals for the Third Circuit, the answer may be “yes.” The Third Circuit’s ruling is particularly relevant to Superfund sites where state and federal governments often coordinate joint cleanups and each incur significant expenses. In light of this decision, potentially responsible parties should not assume that they can avoid liability for costs incurred by the federal government by settling with a state entity.

In New Jersey Department of Environmental Protection v. American Thermoplastics Corp. et al., the environmental costs at issue arose from the Combe Fill Landfill Superfund Site in Morris County, New Jersey, which was owned and operated by numerous entities for decades. In 1983, the United States Department of Environmental Protection (“USEPA”) designated the property a Superfund site and entered into a cooperative agreement with the New Jersey Department of Environmental Protection (“NJDEP”) to jointly clean up the property. The many potentially responsible parties included Carter Day Industries Inc. (“Carter Day”), which filed for bankruptcy in 1991. As part of the bankruptcy proceedings, Carter Day entered into a settlement agreement with NJDEP to address its liability to the State of New Jersey for remediation costs. The USEPA was not a party to that agreement.

In 1998, after incurring costs to investigate and remediate the site, USEPA and NJDEP each sued multiple responsible parties for reimbursement. Among the parties sued was Compaction Systems Corporation (“Compaction”), which previously was retained by one of Carter Day’s subsidiaries to conduct operations at the

site. Following a settlement agreement with both NJDEP and USEPA in which Compaction agreed to pay certain remediation costs, it filed a third-party complaint against Carter Day for contribution under Section 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). (Section 113(f) of CERCLA permits a private party that pays remediation costs, including remediation costs incurred by the federal government, to seek reimbursement from other private parties.) Compaction's complaint sought reimbursement from Carter Day for remediation costs Compaction paid to the USEPA.

The District Court dismissed Compaction's complaint and ruled in favor of Carter Day, reasoning that Carter Day's 1991 settlement agreement with the NJDEP protected it from contribution claims pursuant to CERCLA arising from the same site. According to the District Court, CERCLA Section 113(f) protected a party from future contribution claims if that party already resolved its liability for a contaminated site with either the state or federal government.

Compaction appealed the District Court's ruling to the United States Court of Appeals for the Third Circuit, which reversed the District Court's holding and ruled that the prior settlement of liability to a state does not bar CERCLA contribution claims for costs the federal government incurred.

The primary question for the Circuit Court was whether the "matters addressed" in the state settlement agreement included Carter Day's liability as to CERCLA contribution claims. The Third Circuit examined the language of CERCLA Section 113(f)(2), which states that "[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." CERCLA does not define the scope of "matter addressed" or explain whether the matters addressed in a state remediation settlement agreement would include liability for federal remediation expenses.

Ultimately, the Third Circuit read the "matters addressed" provision of CERCLA Section 113(f)(2) narrowly and looked to the language of the settlement agreement itself to determine that the parties did not intend for the agreement to include liability for costs incurred by the USEPA. According to the language of the settlement agreement, Carter Day was discharged from "all liabilities to NJDEP," and the agreement made no mention of Carter Day's liability for costs incurred by the USEPA. In addition, the Circuit Court looked to the reasonable expectations of the parties and found that it would be unreasonable for either Carter Day or NJDEP to have expected at the time of settlement that the agreement would apply to bar future CERCLA contribution claims for costs incurred by the USEPA.

Carter Day argued that a narrow reading of the scope of CERCLA section 113(f)(2) would deter responsible parties from entering into early remediation settlement agreements, which would be contrary to CERCLA's goal of

prompt cleanups. In response, the Circuit Court acknowledged that its narrow reading of “matters addressed” could affect future responsible parties’ incentives to settle, but it determined that concern was outweighed by the need for equitable distribution of cleanup costs. The Third Circuit explained that its interpretation of section 113(f)(2) would encourage responsible parties to settle with both of the relevant state and federal governments. The Court cautioned that reading this provision broadly would encourage responsible parties to rush to settle their liability with only the relevant state in order to avoid contributing to the typically more extensive costs incurred by the USEPA.

The Circuit Court ended its opinion by acknowledging that its decision aligned with CERCLA section 104, which makes clear that remedial costs incurred by the USEPA and individual states are distinct, and thus, are separate matters to be addressed. In light of the Circuit Court’s ruling, individuals and companies who entered into remediation settlement agreements with either a state or the federal government for sites involving cleanup efforts by both USEPA and state environmental agencies should be aware that they may face exposure for costs incurred by the non-settling governmental entity. Going forward, potentially responsible parties are cautioned to carefully consider the scope of the specific matters addressed in remediation settlement agreements.

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