

[Blogs](#)

June 19, 2023

CERCLA Contribution Action Not Barred by Claim Preclusion



Contribution claims brought under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are not barred by prior environmental litigation if the property at issue and types of claims brought are distinct from previous claims. *GP Vincent III v. Estate of Beard*, No. 21-16555 (9th. Cir. May 17, 2023).



Defendants leased the subject property to a manufacturer who released PCE, which impacted the soil and groundwater of neighboring properties. In 1992, Defendants sold the property to a company that did not use PCE in its operations. In 2007, owners of the neighboring property discovered the PCE contamination from Defendants' property and sued Defendants and the successor owner for cleanup costs under CERCLA. The parties entered into a settlement agreement in 2010 placing the burden to remediate on the successor owner, which failed to remediate and defaulted on its mortgage. The property was placed in state receivership.

Plaintiff later took title to the property and assumed cleanup obligations for the site under CERCLA and the California Land Reuse and Revitalization Act, which allowed it to seek contributions from previous landowners. Plaintiff sued Defendants and the manufacturer responsible for the contamination, but the district court held that Plaintiff's claims were barred by claim preclusion.

The Ninth Circuit reversed, finding that Plaintiff's case was not barred by claim preclusion. First, the prior and current CERCLA claims were different. The original litigation was limited to cleanup liabilities on the neighboring property, while Plaintiff's claim concerned cleanup on the source property. Also, the original claim was brought under CERCLA section 113, which is an action for contribution, while Plaintiff's claim was brought under section 107, which allows parties who have already incurred clean up costs to recoup their expenses. Second, CERCLA expressly contemplates successive cost recovery action because only costs already incurred can be recovered under section 107. Lastly, allowing a successive contribution action would ensure that the proper parties were held responsible for the cleanup. One judge concurred with the result but argued that it should have been based on lack of privity not identity of claims. The judge reasoned that CERCLA imposes a liability on the owner and the obligation does not run with the land. Therefore, Plaintiff did not meet the privity requirement for claim preclusion and could assert subsequent contribution claims.

Authors

Topics

[Environmental and Land Use Litigation](#)