Catellus Development Corp. v. United States

Commentary
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Can CERCLA encourage all polluters to pay and simultaneously encourage all companies to recycle?

The Ninth Circuit casts a wide net of liability on companies that "arrange for disposal" of "hazardous substances." [See, e.g., Jones-Hamilton v. Beazer Materials and Services (9th Cir. 1992) 959 F.2d 126, 1992 CELR 210.] Consequently, many courts have extended this theory of liability to include not only companies that send hazardous chemicals to a site for formulating, but also companies that send materials, such as batteries, to a site for recycling.

In Catellus, the Northern District Court of California put the brakes on the seemingly limitless expansion of environmental liability of so-called "arrangers." Catellus is one of the few cases in which the court refused to hold defendants liable as "arrangers" where the site contamination resulted, at least in part, from hazardous materials sold by defendants for recycling. However, while the court seems particularly troubled with "thwarting the goals of recycling" by imposing liability on companies intending to recycle materials, no clear winners emerge from the court's decision.

On the one hand, read strictly, Catellus can be limited to its unique facts -- companies that (1) relinquish all ownership interest in and control over materials destined for recycling, and (2) do not make the decision to send the waste materials from the recycling operation to a separate and distinct hazardous waste facility, will not be held liable as "arrangers" for the disposal of hazardous waste. On the other hand, Catellus can be interpreted to exempt an entire class of defendants, i.e. companies that sell materials for the purpose of recycling, from liability under CERCLA.

The bottom line, however, is that when faced with liability, companies that have some connection to a CERCLA site can still count on being hit with a claim of "arranging for disposal," especially when the materials sold by a company for recycling are hazardous. In addition, companies that have already been held liable in Superfund suits will continue to seek contribution from parties with more attenuated connections to contaminated sites. Nevertheless, parties that are potentially liable may use Catellus to argue that at least one district court has acknowledged that recycling should be encouraged by restricting CERCLA liability.

These issues have yet to be resolved by the Ninth Circuit. The Jones-Hamilton line of cases distinctively dealt with substances destined for recycling that were hazardous by their very nature, such as hazardous chemicals,

rather than materials, such as scrap metal, that are not inherently hazardous. It is this latter factual situation that has so perplexed federal courts around the country, as courts have attempted to strike a balance between the goals of recycling and the polluter pays concept. Clearly, many battles lie ahead in reconciling these objectives.

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