

Party Settles Arranger Liability under Illinois Superfund Statute

By: Dave Scriven-Young, Attorney at Peckar & Abramson, P.C.

(Originally published at: <http://illinoisenvironmentallaw.com/cercla/party-settles-arranger-liability-under-illinois-superfund-statute/>)

A common legal problem that manufacturers and other companies face is liability for the cleanup of a hazardous substance that has been released. This can include arranger liability under the federal Superfund law or a state equivalent. Illinois law, for example, imposes liability on a company that arranged with another company to dispose of a hazardous substance at a landfill that actually released that hazardous substance. (415 ILCS 5/22.2(f)(3).)

A recent settlement approved by the Illinois Pollution Control Board is an example of how arranger liability works. In *People v. Waste Hauling Landfill, Inc., Case No. PCB 10-9*, the Board accepted the parties' stipulation and proposed settlement. The State of Illinois alleged that one of the defendants, BorgWarner, arranged for the disposal of one or more hazardous substances at the Waste Hauling Landfill. The State further alleged that BorgWarner was a responsible party under Illinois law and liable for past, present, and future removal costs incurred by the State resulting from the releases and threatened releases at the Landfill.

Under the terms of the settlement, BorgWarner neither admits nor denies the factual allegations of the State's claim. BorgWarner agreed to pay \$39,000 for reimbursement of removal costs and \$250 in attorney's fees. A number of other parties already settled claims against them arising out of releases at this site.

Depending on the circumstances, the problem of Superfund liability can be solved through legal defenses, including: (1) acts or omissions of third parties with whom a potentially responsible party has no contractual relationship, (2) arranging for the recycling of certain materials, and (3) divisibility (showing that the harm it caused can be separated from the harm caused by other potentially responsible parties).

Stay tuned to the Illinois Environmental Law Blog for more news and developments. To subscribe to this blog and sign up for my free newsletter, go to <http://illinoisenvironmentallaw.com/subscribe/>. To set up a free initial consultation to discuss your legal matter, please contact Chicago environmental attorney Dave Scriven-Young at (312) 239-9722 or dscriven-young@pecklaw.com.