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Client Alert

Environmental Law & Litigation

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TSCA Citizen Suit and Public Nuisance Claims Dismissed by EDNY

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On May 19, the Eastern District of New York (the Court) dismissed claims brought by the Town of Oyster Bay, New York (the Town) under Section 20(a)(1) of the Toxic Substances Control Act (TSCA)[1] and for public nuisance damages.[2] As to the former, the Court held (1) the defendant's preliminary sampling activities did not require United States Environmental Protection Agency (EPA) approval under TSCA and thus did not give rise to a TSCA citizen suit claim, and (2) plaintiff's claim to restrain defendant's polychlorinated biphenyl (PCB) remediation plan was not ripe, as the complaint did not allege that the plan, which had not yet been implemented, would be commenced without receiving the required EPA approvals. As to the latter, the Court held that the discovery of more drums and alleged contamination at the site did not constitute a new public nuisance that resets the statute of limitations, and as a result, plaintiff's claim for public nuisance damages were time-barred.

Background

As early as the 1930s, Northrop Grumman (Grumman) used an approximately 600-acre site in Bethpage, New York (the Bethpage Facility) to develop, test, and manufacture military aircrafts.[3] Grumman disposed of waste containing hazardous substances on an 18-acre portion of the Bethpage Facility from approximately 1949 to 1962.[4] In October 1962, Grumman transferred the same 18-acre area to the Town under the express condition that the Town use it as a community park.[5] In the 1980s, the parties began investigating the contamination in this 18-acre area, and, relevant to this alert, in 2002, Grumman identified PCB contamination in certain soil samples.[6] The action at issue was first filed in September 2023, with an amended complaint filed in February 2024.[7] Grumman moved to dismiss the Town's claims.

TSCA Section 20(a)(1) Claims

Section 20(a)(1) of TSCA provides that any person may commence a citizen suit "to restrain" a violation of TSCA or certain of its implementing regulations.[8]

As relevant here, the Town first alleged that in conducting PCB sampling activities from 2014 to 2017 without prior EPA approval, Grumman failed to comply with TSCA's approval requirements.[9] The Court dismissed this TSCA claim for failure to state a claim.[10] In dismissing the claim, the Court pointed out an inconsistency contained in 40 C.F.R. § 761.61, namely that the provision requires *both* that "[a]ny person wishing to sample, extract, analyze, cleanup, or dispose of PCB remediation waste" in a risk-based cleanup submit a Risk-Based Disposal Approval Application to EPA and receive EPA approval before "conduct[ing] [risk-based] cleanup activities"[11] *and* that the application *itself* include all data concerning pre-cleanup samples, which necessitates sampling prior to obtaining EPA approval to sample.[12] The Court thus held that "[t]he more logical reading of the Section 761.61 as a whole is that Risk-Based Approval Applications and EPA approval are required for 'cleanup' activities, not the preliminary activities required before a cleanup" (i.e., sampling).[13]

The Town's citizen suit claim separately alleged that Grumman failed to comply with the TCSA approval requirements by failing to secure EPA approval to proceed with its proposed PCB remediation plan.[14] However, the Court found that while "the Amended Complaint alleges that [Grumman] has not yet submitted a Risk Based Disposal Approval Application," the Town makes no allegations that Grumman "has enacted, or will enact, the PCB reburial plan *before* it submits a Risk Based Disposal Approval Application and obtains EPA approval."[15] Therefore the Court dismissed this claim as not yet ripe.[16]

Public Nuisance Damage Claim

The Town asserted a public nuisance claim seeking injunctive relief and damages. New York law sets the limitations period for public nuisance damages claims to three years "from the date of discovery of the [nuisance] by the plaintiff or from the date when through the exercise of reasonable diligence such [nuisance] should have been discovered by the plaintiff, whichever is earlier."[17]

The amended complaint alleged the Town discovered soil contamination in 2002 and groundwater contamination in 2003, and accordingly, the Court found that the statute of limitations expired in 2006 at the latest and dismissed the public nuisance claim for damages.[18] Importantly, the Court found the statute of limitations period had run even though the Town alleged that new chemical drums were recently identified.[19] As the Court explained, these newly discovered drums were not "a different public nuisance" but rather "another fact relating to the same public nuisance–soil and groundwater contamination due to [Grumman's] historical dumping practices, which were discovered over 20 years ago."[20]

Potential Implications

This decision clarifies the PCB sampling requirements under TSCA and how those requirements intersect with TSCA's citizen suit provision to "restrain" violations. The Court's holding that EPA approval under TSCA is required for "cleanup" activities but not "preliminary activities," including sampling, eliminates an administrative barrier to investigative activities.

The decision also provides important clarity that more evidence of the same already known hazardous substance contamination will not reset the statute of limitations period for public nuisance damages claims under New York law. That the statute of limitations does not reset each time additional historical contamination is discovered creates a meaningful cutoff date for parties defending public nuisance damage claims.

For more information, please contact any of the authors of this Client Alert.

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[1] 15 U.S.C. § 2619(a)(1).
[2] The Eastern District of New York also granted Grumman's motion to dismiss the Town's promissory estoppel claims under New York common law, denied Grumman's motion to dismiss the Town's claims under the Resource Conservation & Recovery Act, and denied the Town's claim for injunctive relief under a public nuisance theory, in turn finding that the Town had standing to bring the surviving claims. The Court also denied Grumman's request to abstain from hearing the case under the primary jurisdiction doctrine, and denied the Town's motion for a preliminary injunction. *Town of Oyster Bay v. Northrop Grumman Sys. Corp.*, 2:23-cv-7146, 2025 U.S. Dist. LEXIS 95210, at *8-11, *85-88 (E.D.N.Y. May 19, 2025).
[3] *Id.* at *17.
[4] *Id.*
[5] *Id.* at *18.
[6] *Id.* at *19-20.
[7] *Id.* at *60.
[8] 15 U.S.C. § 2619(a)(1).
[9] *Id.* at *72.
[10] *Id.* at *104.
[11] 40 C.F.R. § 761.61(c)(1).
[12] *See Oyster Bay*, 2025 U.S. Dist. LEXIS 95210 at *105-106.
[13] *Id.* at *106.
[14] *Id.* at *72.
[15] *Id.* at *100.
[16] *Id.* at *99, *107.
[17] *Oyster Bay*, 2025 U.S. Dist. LEXIS 95210 at *111-112 (quoting NY CPLR § 214-c(2)).
[18] *Id.* at *113.
[19] *Id.* at *113, *113 n.21.
[20] *Id.* at *113 n.21.

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