



Tenth Circuit Clarifies Statute of Limitations for Environmental Cleanup Contribution Claims

On February 19, 2025, in [*Atlantic Richfield Co. v. NL Industries*](#), the U.S. Court of Appeals for the Tenth Circuit addressed the timeliness of a suit to recoup environmental cleanup costs pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). The case addresses the different limitation periods for either a “cost recovery action” or a suit for “contribution.”

Background

The case arose from environmental damage caused by sulfuric acid leaking into a river from a plant near a mine in Colorado. After the original owner of the site constructed sludge ponds and tried to stem the contamination, Atlantic Richfield acquired the mine and undertook additional cleanup efforts, including constructing more sludge ponds and water treatment systems. Roughly two decades later in 2000, the Environmental Protection Agency (EPA) attempted to stabilize the sludge ponds, but the acid continued to leak. In 2011, the EPA ordered Atlantic Richfield to address the problems with the sludge ponds and to build water treatment systems to adequately address the contamination.

In 2021, after a decade of additional cleanup efforts, Atlantic Richfield entered into an administrative settlement with the EPA involving a payment to EPA of \$400,000 for the federal government’s expenses and an agreement to continue cleanup efforts. Atlantic Richfield then filed a lawsuit against NL Industries, seeking contribution for a portion of the cleanup costs it had incurred.

Generally, pursuant to the Superfund statute, a responsible party can try to recoup expenses incurred for an environmental cleanup through an action for either cost recovery or contribution. The two actions are subject to different limitation periods:

- Contribution claims have a three-year statute of limitations from the date of judgment or settlement with the EPA.
- Cost recovery claims have a six-year limit from the start of cleanup.

Atlantic Richfield argued that its claim for contribution was based on the costs incurred during the cleanup and the settlement with the EPA; thus the three-year limitation period from the date of the settlement in 2021 was applicable. The defendant, NL Industries, argued that the claims were time-barred as cost-recovery claims subject to a six-year limitations period. The U.S. District Court for the District of Colorado agreed, granting partial summary judgment in favor of NL Industries, reasoning that the claims were subject to the six-year statute of limitations for cost recovery actions under CERCLA.

Atlantic Richfield appealed, and the Tenth Circuit reversed, holding that the case involved contribution, not cost recovery, and therefore should be governed by the three-year statute of limitations for contribution actions under CERCLA § 113(g)(3). If Atlantic Richfield's claim involved cost recovery, the action would have been untimely. But the appellate court held that the claim fits the statutory requirements for a contribution action.

Why the Characterization Matters: Contribution vs. Cost Recovery

Contribution claims are typically filed by parties who have already settled their liability with the government or another responsible party and seek to recoup a proportionate share of the cleanup costs from others who share liability. These claims fall under CERCLA § 113(f):

- **Section 113(f)(1):** Allows contribution claims during or following specified civil actions, such as lawsuits under CERCLA § 106 or § 107.
- **Section 113(f)(3)(B):** Allows contribution claims after an administratively or judicially approved settlement that resolves a party's liability to the federal government for an environmental response action.

Cost recovery claims, on the other hand, are filed by parties who have incurred expenses in cleaning up environmental contamination but have not been sued by, or settled their liability with, the government. These claims fall under CERCLA § 107(a), which allows recovery of cleanup costs from other potentially responsible parties.

Tenth Circuit's Decision: Why Contribution Applied Here

The Tenth Circuit determined that Atlantic Richfield's claim fell under contribution because it had settled with the EPA, making it subject to the three-year statute of limitations, as it aligned more accurately with a contribution action.

The administrative settlement and order were entered in 2021; Atlantic Richfield brought the contribution action the next year, making it timely.

Fascinating Twists

This case involved intriguingly unusual facts. Here, NL Industries argued that Atlantic Richfield was "gaming" the system "by seeking the same expenses previously requested in a cost-recovery action." Indeed, Atlantic Richfield had tried to recoup "nearly all the same cleanup expenses" before settling in 2021 with the EPA.

The Tenth Circuit acknowledged that, before the settlement with EPA was completed, Atlantic Richfield could seek reimbursement for its cleanup expenses only in a cost-recovery action. The court concluded, however, that "the later settlement changed the nature of the claim, foreclosing relief for cost recovery and triggering a right to seek contribution."

The court continued stating:

The change stemmed from the settlement terms, which identified Atlantic Richfield's cleanup obligations. For example, the settlement expressly covered previous and future cleanup expenses, required Atlantic Richfield to engage in cleanup actions at the site, and protected Atlantic Richfield from future liability to the EPA or a third party. These terms triggered a right to seek contribution under § 113(f)(3)(B) regardless of Atlantic Richfield's reasons for entering into the settlement.

In addition, the court had to address the fact that section 113(g)(3) covers only four kinds of claims, none of which fit the facts of this case. The court acknowledged that there was no expressly applicable limitations period. Atlantic Richfield incurred expenses through an administrative settlement which is not covered by either sections 113(g)(2) or (3).

The court continued: "Without an expressly applicable provision, we borrow the 'most closely analogous statute of limitations.'" Then, after analyzing both state law and federal law to "find the closest fit," the court held that "Federal law provides a closer analogy and accommodates federal cleanup policies. ... Given the nature of the action and the congressional design, any contribution claim is subject to the ... [three-year] statute of limitations in section 113(g)(3)."

Key Takeaways

1. Correct Characterization of Claims is Critical

- This case highlights the importance of accurately characterizing an environmental claim as either cost recovery or contribution. Misclassification could result in a claim being deemed untimely and dismissed.

2. Impact on Contribution Actions Under CERCLA

- The ruling clarifies that CERCLA § 113(f)(3)(B) applies to contribution claims following administrative settlements with the federal government, even if the action does not fit within the specific categories listed under § 113(g)(3).

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