

Court Limits Calif.'s Ability To Chase Costs At Battery Plant

By **Juan Carlos Rodriguez**

Law360 (October 25, 2022, 7:49 PM EDT) -- A California federal judge handed a win to companies battling the state over the \$136 million cleanup of a former battery recycling center near downtown Los Angeles, ruling that the area in which liability can be determined is much smaller than what the state asked for.

The California Department of Toxic Substances Control **had asked** U.S. District Judge Stephen Wilson to find that lead pollution from the former Exide Technologies Inc. facility in Vernon, Calif., had spread over about 1.7 miles in every direction. But the judge said that the state couldn't prove that all the lead in the area could be attributed to the facility, and he found liability may only be established within about a half-mile radius.

"The court concludes that plaintiffs (1) did not meet their burden in showing that the entirety of the 1.7-mile radius could have been contaminated, and certainly not in amounts that would have caused plaintiffs to incur response costs in the residential areas; and (2) did not meet their burden in showing that discrete portions of the residential areas were contaminated," Judge Wilson wrote in a **verdict** favoring the defendant companies.

Judge Wilson's decision resolved an unusual procedural event in which he allowed a trial to determine the scope of the area in which responsibility under the Comprehensive Environmental Response, Compensation and Liability Act could be determined. The next step in the case is litigating which parties are responsible for what portion of the pollution, depending on whether the state might seek a review of the geographic scope ruling.

DTSC spokesperson Russ Edmondson on Tuesday told Law360 that the department hasn't fully processed Judge Wilson's decision.

"This is a complex case with a long and detailed court ruling," Edmondson said. "DTSC is in the process of reviewing it and evaluating potential next steps."

According to the state, its allegation that the pollution spread beyond the industrial area around the Vernon plant was based on an investigation of the surrounding area, including the industrial space immediately around the plant and residential areas beyond that, where cleanup efforts largely centered. The residential areas were characterized by the state as being overburdened by pollution compared to other parts of the city.

In 2020, the DTSC sued NL Industries Inc., Clarios LLC and others under CERCLA to hold them liable as former owners and operators of the site for transporting hazardous substances to the site for treatment or disposal.

Bina Reddy, a principal at Beveridge & Diamond PC who represents Clarios, on Tuesday praised Judge Wilson's ruling.

"We are pleased that the court undertook such a detailed look at the law and facts presented by these issues," Reddy told Law360.

In 2015, battery manufacturer Exide Technologies, the last company to operate the Vernon plant, agreed to cease operations after nearly a century. Exide filed for Chapter 11 in May 2020.

While Judge Wilson determined the geographic scope of liability for now, the California Environmental Protection Agency in July asked the U.S. Environmental Protection Agency to list the former Exide plant as a Superfund site.

"We are requesting that U.S. EPA work with the state of California to help expedite the cleanup of Exide's poisonous legacy in these vulnerable Los Angeles communities," CalEPA said in its July letter to the federal agency. "U.S. EPA can fill the void left by Exide when it abrogated its obligations through bankruptcy."

In its letter, CalEPA asked the U.S. EPA to list not only the site but the surrounding "environmental justice communities" as well.

In a response to the state, the U.S. EPA said it would implement a rulemaking process to propose the Superfund listing. It's not clear how the geographic boundaries set by the federal agency for a potential Superfund site would impact this litigation.

The other parties did not respond to requests for comment Tuesday.

The California Department of Toxic Substances Control is represented by Sarah E. Morrison, Timothy E. Sullivan, Aarti S. Kewalramani, Elizabeth B. Rumsey, and Kate Hammond of the California Department of Justice, Matthew K. Edling, Adam M. Shapiro, and Yumehiko Hoshijima of Sher Edling LLP, and Christopher T. Nidel and Thomas M. Sims of Nidel & Nace PLLC.

Clarios LLC is represented by Bina R. Reddy, Eric L. Klein and Gary J. Smith of Beveridge & Diamond PC.

Gould Electronics is represented by Krista M. Enns, Lily A. North and Nicholas J. Secco of Benesch Friedlander Coplan & Aronoff.

Quemetco Inc. is represented by Alexander P. Swanson, Thomas F. Cochrane and Patrick W. Dennis of Gibson Dunn & Crutcher LLP.

NL Industries is represented by Joel L. Herz of the Law Office Of Joel L. Herz, and Kenneth A. Ehrlich of Elkins Kalt Weintraub Reuben Gartside LLP.

The case is California Department of Toxic Substances Control et al. v. NL Industries Inc. et al., case number 2:20-cv-11293, in the U.S. District Court for the Central District of California.

--Additional reporting by Gina Kim. Editing by Kristen Becker.