

Washington District Court Reversal on MTCA Liability for Smokestack Emissions

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A court in the Eastern District of Washington recently [reversed](#) its prior [decision](#) concluding that the deposition of aerial emissions from a smokestack in Canada could support a claim for arranger liability under Washington's cleanup statute, the Model Toxics Control Act (MTCA). The court previously held that under MTCA, "[t]he ordinary meaning of 'disposal' does not preclude [disposal by aerial emissions], and crucially, MTCA expressly contemplates cleanup sites created by aerial contamination," despite a [2016 Ninth Circuit decision](#) in the same matter that denied arranger liability under CERCLA based on aerial emissions for the same facility.

Teck Cominco Metals, Ltd. (Teck), in its motion for reconsideration, emphasized the constitutional and federalism issues raised by the federal district court's prior decision. Teck argued that the decision could have given Washington State the power to regulate a smelter in Canada.^[1] However, the court's order did not address these issues, instead focusing on MTCA's definition of arranger liability under [Revised Code of Washington § 70A.305.040\(1\)\(c\)](#). The court held that the State of Washington failed to plausibly allege that Teck was liable as an arranger. The court reasoned that even if Teck intended to direct air emissions to the Upper Columbia River, as the State alleged that it did, the State had not alleged sufficient facts to show that the "disposal" of wastes to the air actually occurred at the Upper Columbia. The court expressed concern that "the State's argument creates a theory of arranger liability with no apparent limiting principle."

Procedurally, this means that the court has now dismissed the State's claim for natural resources damages under MTCA. Teck's motion for summary judgment on the ripeness of the State's natural resource damages claims under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is still pending. Depending on the resolution of that motion, discovery on the State's remaining CERCLA claims is due to commence in mid-March, with a trial set for February of 2024.

The district court's reversal continues a recent pattern of court decisions that more closely align MTCA and CERCLA, consistent with a [2018 Washington Supreme Court decision](#) that sought to

harmonize MTCA and CERCLA standards of liability.

FOOTNOTES

^[1] The 9th Circuit rejected Teck's similar arguments about the extra-territorial application of CERCLA in a [2006 decision](#). Our Seattle colleague [Loren Dunn](#) prepared an [amicus brief](#) on that issue, the reasoning of which was largely adopted by the court.

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