

EPA to decide who must provide assurances in cleanups

Feb. 27 -- The U.S. Environmental Protection Agency must begin the process of determining which industries and facilities must provide financial assurances to cleanup potentially hazardous sites.

The U.S. District Court for the Northern District of California in San Francisco denied the EPA's summary judgment motion to dismiss the plaintiffs' case, which calls on the EPA to require financial assurances under the Superfund program from companies whose sites are the most environmentally harmful.

Environmental law firm Earthjustice is suing the agency on behalf of the Sierra Club and several other groups. They claim the EPA has shirked its duty to promulgate and implement financial assurance.

Section 108(b) of the federal Comprehensive Environmental Response, Compensation and Liability Act required the federal government to identify classes of facilities, owners and operators for which it would first develop financial requirements, based on the highest risk of harm, no later than three years after Dec. 11, 1980.

The federal government has yet to do so. The court ordered the EPA to publish a notice of the classes in the Federal Registry. It will then look into whether the EPA is required to promulgate and implement financial assurance.

"Instead, the court will hold these issues in abeyance pending EPA's publication of notice of classes as the court believes this will shed light on the merits of the other challenged duties under Section 108(b)," District Court Judge William Alsup said in his decision.

Conversely, the court also granted the U.S. Department of Transportation and its interveners their request for summary judgment. It ruled the plaintiffs failed to establish that they suffered injury traceable to the DOT's action or inaction, and the department is not responsible for implementing financial assurances.

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