



KNOW THE LANDSCAPE™

ENVIRONS

United States District Court Holds Raw Wood Debris is Not a Hazardous Substance but Allocates Cleanup Costs to Owners

Breaking Developments In Environmental Law

Raw wood is not a hazardous substance under the federal environmental statutes, according to a federal district court ruling, but that was not enough to preclude allocation of cleanup costs to parties who deposited the material. In the decision issued on June 22 by United States District Judge Ronald Leighton in *Arkema Inc., et al. v. Asarco Inc., et al.* Cause No. C0-5087 RBL (W.D. Washington), the court determined that the dumping sites constituted facilities for purposes of allocating cleanup costs to the owners.

The *Arkema* case concerned how to divide the costs of cleaning up the Hylebos Waterway in Tacoma among various parties who contributed contamination or owned property where contaminated sediments, creosoted pilings and raw wood debris had been dumped. Although the parties associated with the raw wood debris successfully argued that it was not a “hazardous substance” within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Judge Leighton acknowledged that raw wood attracts microorganisms that excrete hazardous substances such as ammonia and hydrogen sulfide. The court, therefore, found that the owner of a site that contains only non-hazardous submerged raw wood debris still can be the owner of a CERCLA “facility” because hazardous substances are released into the environment by the microorganisms at the site. Consequently, the owner of a CERCLA facility can be held for a share of the costs of cleanup even if the original items disposed of were not hazardous at the time of disposal.

Liability as an owner of a facility became an important factor in the *Arkema* case because the wood debris had to be removed in order to clean up the contaminated sediments underneath. Therefore, the court allocated the incremental costs associated with removing the wood debris to the parties who ran the log yards and debarking operations adjacent to the waterway.

While the court definitively rejected wood debris as a hazardous substance under CERCLA, there still is an open question whether such debris is a hazardous substance under the state Model Toxics Control Act.

For more information, please contact the Environmental Law Practice Group at Lane Powell:

206.223.7000 Seattle
503.778.2100 Portland
environs@lanepowell.com
www.lanepowell.com

We provide *Environs* as a service to our clients, colleagues and friends. It is intended to be a source of general information, not an opinion or legal advice on any specific situation, and does not create an attorney-client relationship with our readers. If you would like more information regarding whether we may assist you in any particular matter, please contact one of our lawyers, using care not to provide us any confidential information until we have notified you in writing that there are no conflicts of interest and that we have agreed to represent you on the specific matter that is the subject of your inquiry.

Copyright © 2007 [Lane Powell PC](#)
Seattle - Portland - Anchorage - Olympia - Tacoma - London