

## Court Finds Successor Corporation Liable for CERCLA Response Costs

JULY 3, 2013

Last month, the U.S. District Court for the Eastern District of California found Sterling Centrecorp, Inc. liable for the costs of cleaning up the Lava Cap Mine Superfund site under CERCLA § 107(a) because: (1) Sterling assumed the liabilities of Lava Cap Gold Mining Corporation (“LCGMC”), the former owner of the mine; (2) Sterling is the successor to LCGMC by de facto merger; and (3) Sterling operated the Lava Cap Mine at the time of disposal of a hazardous substance. The LCGMC owned and operated the Lava Cap Mine from 1934 to 1943, which operations resulted in arsenic and cadmium contamination at the site. In 1952, Sterling purchased all of LCGMC’s assets and contractually assumed all of LCGMC’s liabilities. Just prior to closing, LCGMC quitclaimed ownership of the mine to its subsidiary, Keystone Copper Corporation. As part of its purchase of LCGMC’s assets, Sterling acquired Keystone’s stock, after which Keystone became a wholly-owned subsidiary of Sterling. LCGMC dissolved soon after closing.

The court concluded that Sterling acquired LCGMC’s CERCLA liabilities under the 1952 purchase agreement, even though CERCLA had not yet been enacted, because a broad assumption of liabilities was contemplated by the parties. The court also held that Sterling’s acquisition of LCGMC had all of the indicia of a de facto merger, including continuity of shareholders, management, personnel, physical location, assets, and general business operations, prompt dissolution of the seller, and tax treatment as a merger. Although the 1952 acquisition was structured as an asset purchase, the court concluded that Sterling absorbed LCGMC and was therefore liable for CERCLA response costs as LCGMC’s corporate successor. Further, the court found Sterling liable as an operator of the Lava Cap Mine because it directed and pervasively controlled management of the mine through its subsidiary, Keystone, during dam collapses in 1979 and 1987, which resulted in disposal of hazardous substances.

The court emphasized that any one of its three conclusions was sufficient to establish Sterling’s liability under CERCLA.

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