

Late Defendants Can Respond in Baltimore Landfill Cleanup Suit

Published: Jul 22 2021 15:44:16

News Story

- Case 'best resolved on merits,' judge said
- Claims filed against more than 150 defendants

By Sylvia Carignan

(Bloomberg Law) --

A \$4.8 million Baltimore landfill cleanup dispute will continue for three companies that initially failed to respond to the lawsuit, after the District of Maryland said a merits determination is warranted.

The 68th Street Site Work Group sought to recover cleanup costs from more than 150 defendants it alleged were responsible for hazardous substances at the site. Airgas Inc., Drug City Pharmacy LLC, and Melibelle USA Inc. failed to timely respond to the lawsuit, and the clerk sent notices of default to the companies.

The U.S. District Court of the District of Maryland granted their motions to vacate the default entries Wednesday, finding no compelling evidence that they deliberately delayed responding.

"This case is best resolved on its merits," the court said.

The work group is an unincorporated association of a dozen businesses that signed a 2017 consent decree for cleanup at the 68th Street landfill. Its members include CSX Transportation Inc., Exxon Mobil Corp., and Black & Decker Inc.

The work group alleges Airgas's predecessors arranged for the disposal of hazardous substances at the landfill but described them as transportation and general office waste. The group alleges Drug City and Melibelle disposed of hazardous substances in a similar manner.

Melibelle and Drug City said they were unaware of the lawsuit before the entries of default, and didn't learn about it through service of process. But, they said, that may be a result of their officers' "lack of understanding of the judicial process."

Each of the defendants say the work group has failed to show they're liable for their predecessors' waste.

"Such evidence—volumetric information of alleged predecessors' waste streams, and their contents, from more than fifty years ago—will be difficult if not impossible to ascertain, and, in fact, that difficulty likely

accounts for the scant and repetitive nature of plaintiff's allegations against all defendants in this case," the court said.

Judge Stephanie A. Gallagher wrote the opinion.

Kenny Law Group LLC, Stuart D. Kaplow of Cockeysville, Md., and the Justis Law Firm LLC, represented the 68th Street Site Work Group.

Saul Ewing Arnstein & Lehr LLP represented Airgas, Melibelle, and Drug City.

The case is *68th St. Site Work Group v. Airgas Inc.*, D. Md., No. 1:20-cv-3385, 7/21/21.

To contact the reporter on this story: Sylvia Carignan in Washington at scarignan@bloombergindustry.com

To contact the editors responsible for this story: Rob Tricchinelli at rtricchinelli@bloomberglaw.com; Steven Patrick at spatrick@bloomberglaw.com