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INTERPRETING "OWNER" AND "OPERATOR" LIABILITY UNDER CERCLA: EDWARD HINES LUMBER COMPANY V. VULCAN MATERIALS COMPANY, 861 F.2D 155 (7TH CIR. 1988)

The inadequacy of methods for the treatment and disposal of hazardous waste has become an issue of national concern.1 In response, Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).2 CERCLA imposes


Most of the solid wastes, and in particular hazardous waste, produced in the United States in the past have been disposed of using environmentally unsound methods. Given a relative surplus of land, an economic system which failed to incorporate environmental damages into product costs, and ignorance of what was occurring underground at disposal sites, past disposal practices have created a large number of situations in which the environment and public health are threatened.

Id. See generally Belthoff, Private Cost Recovery Actions Under Section 107 of CERCLA, 11 COLUM. J. ENVTL. L. 141 (1986) (the inadequate disposal of hazardous waste is a problem of epic proportions).

liability upon "owners" and "operators" of facilities which must dispose of hazardous waste.3 In 1986, Congress amended CERCLA with the Superfund Amendments and Reauthorization Act (SARA) to provide the government with a right to contribution from liable parties.4

precise inadequacies resulting from RCRA's lack of applicability to inactive and abandoned hazardous waste disposal sites that prompted the passage of CERCLA."); United States v. A&F Materials Company, Inc., 578 F. Supp. 1249, 1252 (S.D. Ill. 1984) ("CERCLA was enacted because Congress realized there were serious gaps in RCRA."); United States v. Price, 577 F. Supp. 1103, 1109 (D.N.J. 1983) ("CERCLA was promulgated in response to deficiencies in RCRA."); United States v. Reilly Tar & Chem. Corp., 546 F. Supp. 1100, 1112 n.2 (D. Minn. 1982) ("Both the House and the Senate Committee Reports express the need for prompt action, concern over inadequacies of existing legislation, and detail the magnitude of the problems caused by hazardous waste disposal in this country.").

3. 42 U.S.C. § 9607(a) (Supp. IV 1986) provides:
   (1) the owner and operator of a vessel or a facility,
   (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
   (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity and containing such hazardous substances, and
   (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—
   (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;
   (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;
   (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such release; and
   (D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

42 U.S.C. § 9607(a). Congress assigned to persons listed in section 107(a) the liability for all costs incurred in cleaning up hazardous waste sites. Congress enacted this liability scheme to ensure "that those responsible for any damage, environmental harm, or injury from chemical poisons bear the costs of their action." S. REP. No. 848, 96th Cong., 2d Sess. 13 (1980). See also State of Ohio ex rel. Brown v. Georgeoff, 562 F. Supp. 1300, 1312 (N.D. Ohio 1983) (discussing the legislative history to § 107(a) and concluding that Congress intended for those who create hazardous waste to bear the cleanup costs).

While several federal district courts have attempted to define the degree of involvement necessary to hold a person liable as an "operator" under CERCLA,\(^5\) only two federal appellate courts have squarely addressed the issue.\(^6\) In *Edward Hines Lumber Co. v. Vulcan Materials*
Co., the Seventh Circuit held a chemical supplier to a lumber plant not liable for cleanup costs because it was not an "owner" or "operator." The Seventh Circuit held a chemical supplier to a lumber plant not liable for cleanup costs because it was not an "owner" or "operator."

Edward Hines Lumber Co., a wood preserving company, contracted with Osmose Wood Preserving, Inc. to build a processing plant in Mena, Arkansas. Pursuant to the agreement, Osmose designed and constructed the facility and installed the wood treatment system. Osmose also trained the personnel and supplied the hazardous chemicals for the system. Osmose licensed Hines to use its trademark, and reserved a right to inspect ongoing operations. Hines, however, operated the plant. After two years of operation Hines sold the plant to the current owner, Mid-South Wood Products, Inc. The Environmental Protection Agency (EPA) subsequently declared the site contaminated by toxic substances and ordered Hines and Mid-South to

7. 861 F.2d 155 (7th Cir. 1988). The Fifth Circuit has followed the Seventh Circuit's decision and did not extend CERCLA liability to a parent corporation whose wholly owned subsidiaries were offenders. Joslyn Manufacturing Co. v. T. L. James & Co., Inc., 893 F.2d 80 (5th Cir. 1990).
8. 861 F.2d at 158-59.
9. Id. at 156. Hines had no experience with using chromated copper arsenate (CCA) to preserve wood, but Osmose represented to Hines that it could handle both the CCA treatment process and the marketing of the treated product. Appellant's Opening Brief at 7, Edward Hines Lumber Co. v. Vulcan Materials Co., 861 F.2d 155 (7th Cir. 1988) (No. 85-1142).
10. 861 F.2d at 156. Hines paid Osmose $135,840 and promised to purchase all of its requirements of chromated copper arsenate from Osmose for the next five years. Id.
11. Id.
12. Id. at 156. As an operator of the facility, Hines controlled daily operations, hired employees, decided how much wood to produce, where to sell it, and at what price. Id. at 158.
13. Id. at 156. As a result of the sale, Hines assigned its interest in the agreement to Mid-South. Appellant's Opening Brief at 12, Edward Hines Lumber Co. v. Vulcan Materials Co., 861 F.2d 155 (7th Cir. 1988) (No. 85-1142).
14. "Although the Act grants most of the substantial authority to the President, he has delegated these and other superfund implementation authority to the EPA, the Coast Guard, and various other agencies." United States v. Northeastern Pharmaceutical & Chemical Co., 579 F. Supp. 823, 838 n.14 (W.D. Mo. 1984) (citing Exec. Order No. 12,316, 46 Fed. Reg. 42,237 (1981)).
15. 861 F.2d at 155. The EPA investigated the CCA plant in November 1985. The investigation consisted of collecting and analyzing surface and subsurface soils and groundwater immediately adjacent to the plant. The EPA found the largest amount of arsenic-contaminated soil within a 200-foot radius of the plant. Appellant's Opening Brief at 13, Edward Hines Lumber Co. v. Vulcan Materials Co., 861 F.2d 155 (7th Cir. 1988) (No. 85-1142).
remove the offending chemicals. Hines filed suit in the District Court for the Northern District of Illinois to recover decontamination costs from its various chemical suppliers. The district court granted the suppliers’ summary judgment motion, holding Osmose not liable as an “operator” for purposes of CERCLA liability because it did not control or manage the Mena facility. On appeal, the Seventh Circuit affirmed, holding Osmose not liable as an “owner” or “operator” under CERCLA.

In 1980, Congress enacted CERCLA to: (1) facilitate the prompt cleanup of hazardous dumpsites by providing financing for both governmental and private responses, and (2) place the ultimate financial burden upon those responsible for the waste. CERCLA created the Hazardous Substance Response Trust Fund, commonly known as “Superfund,” to finance the cleanup of hazardous waste sites. Section 104 of CERCLA permits the EPA to use Superfund moneys to clean up the hazardous waste sites and to recover costs from responsible parties pursuant to section 107.

16. 861 F.2d at 155. CERCLA authorizes the EPA to respond or compel response to actual or threatened releases of hazardous materials. Belthoff, supra note 1, at 144.
18. 685 F. Supp. at 657.
19. 861 F.2d 155, 158-59 (7th Cir. 1988).
20. Rich, supra note 1, at 671. The 96th Congress hastily passed CERCLA during its closing days. Consequently, CERCLA’s legislative history is very scant. Nonetheless, the congressional members who favored CERCLA viewed it as speedy resolution to the major problems associated with hazardous waste. CERCLA proponents feared that waiting to pass similar legislation until the next Congressional session would only result in a weaker version of CERCLA. Grad, A Legislative History of the Comprehensive Environmental Response, Compensation, and Liability (“Superfund”) Act of 1980, 8 COLUM. J. ENVTL L. 1, 34 (1982). See also Belthoff, supra note 1, at 144 (by hastily drafting CERCLA, Congress created many uncertainties in the statute).
22. Rich, supra note 1, at 651. Section 104(a)(1) of CERCLA provides: Whenever (A) any hazardous substance is released or there is a substantial threat
Section 107 of CERCLA establishes "owners" and "operators" as one group of potentially responsible parties. However, the statutory definition of "owner" and "operator" is circular. Neither CERCLA nor its legislative history clearly identifies when one is liable as an "owner" or "operator." Consequently, courts interpret the Congressional intent and the statutory language to impose liability upon of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminate which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant or contaminate . . . or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. . .


23. See supra note 3 for text of CERCLA's potentially responsible parties.

24. 42 U.S.C. § 9601(20)(A) defines owner or operator as:

   (i) in the case of a vessel, any person owning, operating or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.


26. See generally Grad, supra note 20, at 1 (discussing the problems congressional leaders tried to solve with CERCLA). See also Rich, supra note 1, at 650 (Congress intended to respond to problems posed by hazardous waste sites and finance the cleanup).


28. Courts base liability upon the parties' relationship to the contaminated site or to the hazardous substances themselves, regardless of fault. See Garber, Federal Common Law of Contribution Under the 1986 CERCLA Amendments, 14 Ecology L.Q. 365, 367-68 (1987). Further, Congress intentionally omitted a standard of liability under CERCLA. Courts addressing the issue have followed one of two positions: (1) the Restatement which allows joint and several liability whenever the harm is indivisible; or (2) the Gore Amendment which allows a court to impose either joint and several liability or apportionment according to a number of different factors including: (1) the abil-

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persons who (1) control and manage the facility,\(^{29}\) (2) discover the contamination and have authority to implement abatement measures,\(^{30}\) or (3) are joint venturers in the enterprise which causes the contamination.\(^{31}\)

Only two circuit courts have thoroughly examined liability as an "operator" under CERCLA.\(^{32}\) In *New York v. Shore Realty Company*,\(^{33}\) the Second Circuit held Shore Realty's only shareholder and officer personally liable for the State's response costs under CERCLA section 107(a)(1).\(^{34}\) The court emphasized that CERCLA's definition of "owner" or "operator" excludes a person who, without participating in the management of a facility, "holds indicia of ownership primarily to protect his security interest in the facility."\(^{35}\) The court held that this exception implies that an owner who manages a facility is personally liable under CERCLA.\(^{36}\) Furthermore, the court held that the


\(^{32}\) See cases cited supra note 6. See infra notes 33-41 and accompanying text for a discussion of the federal appellate decisions.

\(^{33}\) 759 F.2d 1032 (2d Cir. 1985).

\(^{34}\) Id. at 1053. In *Shore Realty*, the State of New York sued the corporation and Donald LeoGrande, its officer and stockholder for cleanup costs. *Id.* at 1037. LeoGrande controlled and directed all corporate decisions. *Id.* at 1038. At the time Shore Realty acquired the property in question, LeoGrande knew about the storage of more than 700,000 gallons of hazardous waste on the premises. Nevertheless, the corporation acquired the site from the state to develop land. *Id.* at 1037. The court held the corporation liable in addition to LeoGrande. *Id.* at 1042.


\(^{36}\) 759 F.2d at 1052.
shareholder was an "operator" of the facility because he was in charge of its daily operations. 37 Thus, the court expanded the definition of "owner" and "operator" by imposing individual liability upon persons who are involved in corporate misconduct. 38

In 1986, the Eighth Circuit followed the Second Circuit's lead and broadened the scope of "owner" or "operator" liability further. 39 In United States v. Northeastern Pharmaceutical and Chemical Co., 40 (NEPACCO), the court affirmed a district court decision that held a corporate officer who arranged for the disposal of hazardous substances personally liable under section 107(a)(1) of CERCLA. 41 The

37. Id.

39. United States v. Northeastern Pharmaceutical and Chemical Co. (NEPACCO), 810 F.2d 726 (8th Cir. 1986); see Comment, Officer and Shareholder Liability Under CERCLA: United States v. Northeastern Pharmaceutical and Chemical Co., Inc., 34 WASH. U.J. URN. & CONTEMP. L. 461 (1988) (questioning the NEPACCO decision to expand CERCLA liability). But see United States v. Dart Industries, Inc. 847 F.2d 144 (8th Cir. 1988) (state environmental agency was not "owner" or "operator" of hazardous waste site under CERCLA, because it did not manage or participate in any activities that contributed to release of hazardous wastes).

40. 810 F.2d 726 (8th Cir. 1986).
41. In NEPACCO, the United States government sued Michaels, its president, and Lee, its vice president, both of whom arranged for the disposal of hazardous waste. The government also sued Mills, the transporter of the hazardous substances, and Syntax Agribusiness, the owner and lessor of the plant, to recover response costs under CERCLA. Michaels and Lee knew that NEPACCO's manufacturing process produced various toxic byproducts which were pumped into a holding tank and emptied by waste haulers. Subsequently, NEPACCO, with the approval of Lee, entered into an agreement with Mills to store the drums at Denney farm. Eight years later, the EPA learned about the hazardous waste disposal at the Denney farm, and ordered a cleanup of the site. The EPA sued to recover response costs and the court held the defendants liable.
District Court for the Western District of Missouri defined "owners" and "operators" as persons who maintain: (1) the capacity to discover discharges in a timely fashion; (2) the power to manage others in control of mechanisms that cause pollution; and (3) the authority to prevent and abate damage.\footnote{42}

The district court reasoned that imposing liability upon only the corporation, and not upon the individuals responsible for decisions about handling and disposing hazardous substances, would frustrate the statutory scheme.\footnote{43} Thus, the court concluded that ownership or actual possession of those substances by the officer was not necessary for liability.\footnote{44} Rather, a corporate officer's authority to control the handling and disposal of the hazardous substances warranted personal liability as an "operator."\footnote{45}

Although only a few federal appellate courts\footnote{46} have addressed "owner" or "operator" liability under CERCLA, several other federal district courts have formulated definitions to impose liability.\footnote{47} In United States v. Carolawn,\footnote{48} the District Court for the District of South Carolina held that a corporate officer responsible for the day-to-day operations of hazardous waste disposal is an "operator" for purs-


\footnote{42} 579 F. Supp. 823, 848 (W.D. Mo. 1984), aff'd, 810 F.2d 726 (8th Cir. 1986) (quoting United States v. Mobil Oil Corp., 464 F.2d 1124, 1127 (5th Cir. 1972)).

\footnote{43} 810 F.2d at 743. \textit{See supra} note 38 and accompanying text discussing individual liability under CERCLA.

\footnote{44} 579 F. Supp. at 849. \textit{See also} United States v. Mottolo, 629 F. Supp. 56 (D.N.H. 1984) (person who arranges for transportation or disposal of hazardous waste need not own or possess the hazardous waste to be liable).

\footnote{45} 579 F. Supp. at 847. The court imposed personal liability upon Lee under CERCLA § 107(a)(3) because he arranged for the transportation and disposal of hazardous substances and thus actually participated in NEPACCO's CERCLA violations, even though Lee did the work on behalf of NEPACCO. \textit{Id.}

\footnote{46} \textit{See supra} notes 33-41 and accompanying text for a discussion of the federal appellate decisions.

\footnote{47} \textit{See cases cited supra} note 5. \textit{See infra} notes 48-68 and accompanying text discussing federal district court cases which have examined liability as an "operator" under CERCLA.

poses of CERCLA liability.\textsuperscript{49} In making its determination, the court adopted the test used by the \textit{NEPACCO} district court.\textsuperscript{50} Furthermore, the \textit{Carolawn} court noted that the CERCLA definition of "owner" and "operator" contemplated personal liability of corporate officials who maintained control or authority over hazardous waste disposal.\textsuperscript{51} Thus, the imposition of CERCLA liability as an "operator" turned on whether the person managed or controlled the activities of the facility in question.\textsuperscript{52}

In \textit{Idaho v. Bunker Hill Company},\textsuperscript{53} the United States District Court for the District of Idaho further expanded the scope of CERCLA liability to include parent corporations which control and manage the subsidiary's facility.\textsuperscript{54} Following the analysis of the courts in \textit{NEPACCO}\textsuperscript{55} and in \textit{Carolawn},\textsuperscript{56} the \textit{Bunker Hill} court identified control of hazardous waste disposal, releases, and management of the facility as the requisite factors for liability as an "operator."\textsuperscript{57} The court interpreted section 107(a)(2)\textsuperscript{58} to impose liability upon those persons who owned and operated the facilities at the time of the disposal of hazardous substances.\textsuperscript{59} The court rejected the defendant's contention that Congress intended to limit liability to only those "owners" and

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\footnote{49. Id. at 2131.}
\footnote{50. Id. See \textit{supra} note 43 and accompanying text (outlining the \textit{NEPACCO} district court test).}
\footnote{52. Id.}
\footnote{53. 635 F. Supp. 665 (D. Idaho 1986).}
\footnote{54. \textit{Id.} at 671-72. In \textit{Bunker Hill}, the court held a parent corporation liable as an "operator" under CERCLA because it: (1) controlled a majority of the subsidiary's board of directors; (2) had the authority to control hazardous waste disposal and releases; (3) could make decisions and implement actions to prevent damage caused by waste disposal; (4) received $27 million in dividends from the subsidiary between 1968 and 1974; (5) consolidated federal income tax returns with the subsidiary corporation. \textit{Id.} at 672.}
\footnote{55. 810 F.2d 726 (8th Cir. 1986). See \textit{supra} notes 40-45 and accompanying text for a discussion of \textit{NEPACCO}.}
\footnote{56. 21 Env't Rep. Cas. (BNA) 2124 (D.S.C. 1984). See \textit{supra} notes 48-52 and accompanying text for a discussion of \textit{Carolawn}.}
\footnote{57. 635 F. Supp. at 665.}
\footnote{59. 635 F. Supp. at 671.}
\end{footnotes}
"operators" who had abandoned the facility. Rather, Congress intended that all responsible parties pay decontamination costs. Thus, the court employed the NEPACCO test to extend the definition of "operator" for purposes of CERCLA liability to a parent corporation which exhibited control and management over the subsidiary's facility.

In 1986, the District Court of South Carolina extended its Carolawn decision in United States v. South Carolina Recycling and Disposal, Inc. by holding parties to a joint venture as common law equivalents to "operator" for purposes of CERCLA liability. Consequently, both parties were held vicariously liable for acts within the scope of the venture, including decontamination costs. Thus, the

60. Id. The court noted that the plain language of § 107(a)(2) eliminates any possibility that all past owners and operators are exempt from liability for hazardous waste releases except those who abandoned their facilities. Id. Section 107(a)(2) provides "any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of ..." is liable. 42 U.S.C. § 9607 (1982 & Supp. IV 1986).

61. 635 F. Supp. at 672 (citing United States v. Mobil Oil Corp., 464 F.2d 1124, 1127 (5th Cir. 1972)). See generally Rich, supra note 1, at 668.


63. 635 F. Supp. at 672. The court cautioned, however, that "care must be taken so that 'normal' activities of a parent with respect to its subsidiary do not automatically warrant finding the parent an owner or operator." Id.


66. Id. at 1004. The court defined joint venture as "a special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation ..." Id. (citing Dexter and Carpenter v. Houston, 20 F.2d 647, 651 (4th Cir. 1927)). The court determined that a joint venture existed when "persons embark in an undertaking without entering on the prosecution of the business as partners strictly, but engage in a common enterprise for their mutual benefits." 653 F. Supp. at 1004 (citing Aiken Mills v. United States, 144 F.2d 23, 25 (4th Cir. 1944)). The court applied a test established by the Fourth Circuit in Rowe v. Brooks, 329 F.2d 35, 40 (4th Cir. 1964), to determine the creation of a joint venture. The test formulated by the Rowe court includes: (1) an oral agreement between the parties to the venture, (2) the planned venture was for mutual advantage and profit, (3) each party to the venture was to have a measure of control over and responsibility for the enterprise, and (4) harm was caused by activities within the scope of the enterprise. Id.

67. South Carolina Recycling, 653 F. Supp. at 1004-05. The parties, McClure and COCC, entered into a written agreement to reclaim and recycle chemical waste prod-
court continued to expand the scope of CERCLA liability through the application of the common law theory of joint venture. 68

Edward Hines Lumber Co. v. Vulcan Materials Co. presented the Seventh Circuit with its first opportunity to examine the definition of “operator” for purposes of CERCLA liability. 69 The court held that Osmose was not liable for decontamination costs to Hines as an “owner” or “operator” under CERCLA. 70 The unclear definition of “operator” in CERCLA 71 led the court to apply the common law theories of independent contractor and joint venture to determine liability. 72 The Hines court held that Osmose acted as an independent construction contractor and thus should not be accountable for Hines’ liabilities. 73 The court also found that the parties did not form a joint venture. 74 In applying these principles, the court reasoned that Osmose did not make operational decisions, control the facility on a daily

ucts. McClure procured the waste products and deposited them, while COCC provided office space and secretarial service while retaining authority to veto McClure’s actions. The parties split the profits equally. Id. at 1000.

68. Id. See supra note 27 and accompanying text (discussing the general application of common law theories to determine CERCLA liability).

69. 861 F.2d 155 (7th Cir. 1988).

70. Id. at 157-59. The court interpreted all facts and inferences in favor of Hines, including the assumptions that Osmose negligently designed and built the facility, and inadequately trained Hines’ employees. The court noted that finding additional entities liable would induce companies to take greater care in design, construction and instruction. Id. at 157.

The court, however, recognized its duty to enforce the statute and not create rules of common law. Id. Accordingly, the court could impose CERCLA liability on Osmose only if it was an “owner” or “operator” pursuant to § 107(a). Id. at 156.

71. Id. at 157. See supra note 24 and accompanying text for a discussion of CERCLA’s circular definition of “owner” and “operator.”

72. 861 F.2d at 157. See supra note 27 and accompanying text for a discussion of the general application of common law theories to CERCLA liability.

73. 861 F.2d at 157-58. The Hines court explained that the employer of an independent contractor is not liable for the contractor’s torts, nor is the contractor liable for the employer’s torts. Id. at 157. The court defined the common law independent contractor as one who controls his own day-to-day operations. Id. at 157 (citing United States v. Orleans, 425 U.S. 807, 815-16 (1976)). In Hines, Osmose acted as the independent contractor when it designed and constructed the plant. Hines controlled and managed the finished facility on a day-to-day basis, acting as the owner and the operator. 861 F.2d at 157-58.

74. 861 F.2d at 158. The court stated that the parties’ relationship lacked three requisite elements for the common law definition of joint venture: (1) willingness to establish a joint venture, (2) shared control, and (3) participation in the division of profits and losses. The Hines court emphasized that the contract between Osmose and Hines specified that Osmose was not a joint venturer or partner with Hines. Further,
basis, or share in the division of profits and losses. It further noted that Congress did not intend to provide unlimited liability under CERCLA. Consequently, Osmose was not liable as an “operator” under CERCLA.

Unlike the Second and Eighth Circuits and the several United States District Courts, the Seventh Circuit defined limits for CERCLA liability. The court implicitly balanced the need to impose cleanup costs on responsible parties against the social need for chemical and waste management industries. Moreover, it wisely interpreted congressional intent by not construing CERCLA in the broadest sense possible. The other courts which imposed CERCLA liability on “operators” found the requisite elements of control and management that are absent in Hines. Therefore, courts should adopt the principles set forth in Hines and not extend CERCLA liability beyond its logical limits.

The Hines decision exemplifies a judicial restriction of CERCLA liability to only those “owners” and “operators” who control or manage a facility for the disposal of hazardous waste. Although an expansion of

Osmose neither managed nor controlled the Hines plant. Finally, the contract required Hines alone to comply with environmental regulations. Id. at 158.

75. Id. at 158.
76. Id. at 157-59.
77. Id. at 157. Although courts could achieve “more” of CERCLA’s legislative purpose by finding additional parties responsible for the response costs, the Hines court recognized that “statutes have not only ends but also limits . . . A court’s job is to find and enforce stopping points no less than to implement other legislative choices.” Id. Parties other than “owners” and “operators” must contribute only to the extent they have agreed to do so by contract. Id. The court criticized Hines for not insisting on warranties and indemnification from its suppliers in situations where Hines lacked expertise. Id. at 158-59.

78. See supra notes 33-38 and accompanying text discussing the Second Circuit case, Shore Realty, regarding “operator” liability under CERCLA.
79. See supra notes 40-45 and accompanying text discussing the Eighth Circuit case, NEPACCO, regarding “operator” liability under CERCLA.
80. See supra notes 5, 43-68 and accompanying text discussing federal district court cases regarding “operator” liability under CERCLA.
81. See supra note 77 and accompanying text for a discussion about the court’s reluctance to expand CERCLA liability to Osmose.
83. Contra Developments in the Law, supra note 28, at 1517 (explaining the importance of an expansive reading of the remedial provisions of CERCLA).
CERCLA's potentially responsible parties would dilute the financial burden for "owners" and "operators," it would provide a disincentive for "owners" and "operators" to carry out the safety measures contemplated by CERCLA. Moreover, that decreased financial burden would create an unnecessarily rigorous and punitive measure to the supplier who provides the necessary chemicals and services to a facility in good faith. Thus, neither Congress nor the courts should broaden the universe of potentially responsible parties under CERCLA.

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84. Contra Id.
* J.D. 1991, Washington University