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Martin A. McCrory
Indiana University School of Business

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HAZARDOUS JURISDICTION/CHATHAM STEEL
CORPORATION V. BROWN: A NOTE ON PERSONAL
JURISDICTION AND CERCLA

MARTIN A. MCCRORY¹

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¹ Assistant Professor in the Business Law Department at Indiana University's School of Business. He is a former Deputy Attorney General for the State of Indiana, where he specialized in environmental and administrative law, with emphasis on RCRA, the Clean Water Act, and Superfund/CERCLA. He was a trial attorney in the United States Department of Justice's Environmental Enforcement Section, specializing in CERCLA. During his tenure at the Department of Justice, Mr. McCrory received the Department of Justice's Award for Outstanding Service. He became a Senior Attorney in the Public Health Program of the Natural Resources Defense Council in 1993 and later became Director of the NRDC's Public Health Program (primarily working on the reauthorization of CERCLA). Mr. McCrory has testified before Congressional Subcommittees on CERCLA.

I. INTRODUCTION

In 1986, the Comprehensive Environmental Response Compensation and Liability Act (hereinafter referred to as "CERCLA")² was amended to include, among other things, a provision for nationwide service of process.³ This provision greatly increased the choice of federal forums in which to sue defendants in CERCLA cases.⁴ Most federal courts hearing a case brought under a federal statute (like the amended CERCLA) which provides for national service of process, test the constitutionality of personal jurisdiction over defendants by measuring their contacts with the United States as a whole rather than the forum state.⁵ In *Chatham v. Brown*, the court broke from this line of thinking and analyzed the case using a traditional constitutional Due Process analysis.⁶ Rather than presupposing personal jurisdiction over the defendant(s) based upon the fact that the defendant(s) had contact with the United States, the court stated that the plaintiff had to establish a prima facie case of personal jurisdiction prior to the court exercising jurisdiction over a defendant that was not a resident of the forum state.⁷ Although the *Chatham* court ultimately held that it had personal jurisdiction over the defendants, the analysis it used may be a harbinger of things to come. That is to say, the constitutional analysis in *Chatham* could easily be used to restrict the exercise of personal jurisdiction in CERCLA cases.

This note analyzes the basis of the court's reasoning, the gaps in the court's logic, and the implications of the decision for future CERCLA cases. Section I explains the facts of the *Chatham* case. Section II discusses CERCLA by first giving an overview of the statute's liability scheme and then specifically applying CERCLA liability to the *Chatham* case. Section III analyzes jurisdiction by offering a brief overview of the law and applying that law to *Chatham*.⁸

²CERCLA was passed in 1980, 42 U.S.C. § 9601 *et seq.* CERCLA was amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub.L.No. 99-499, 100 Stat. 1613 (1986). The Act is commonly referred to as "Superfund" in relation to the multimillion dollar tax-based trust fund that was established for hazardous waste removals and remedial actions.

³42 U.S.C. § 9613(e) (stating: "In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.").

⁴James J. Connors II, *Nationwide Service of Process Under the Comprehensive Environmental Response, Compensation, and Liability Act: The Need for Effective Fairness Constraints*, 73 VA. L. REV. 631, 632 (1987).

⁵*Id.*

⁶*Chatham v. Brown*, 858 F. Supp. 1130, 1146-50 (N.D.Fla. 1994).

⁷*Id.* at 1145.

⁸More specifically, this section will examine the exercise of Florida's long-arm jurisdiction over a non-resident defendant and the court's exercise of personal jurisdiction over the defendant in light of constitutional constraints of "minimum contacts" and fairness.

Section IV concludes by forecasting the potential ramifications of the *Chatham* case on future CERCLA cases.

II. FACTS

Chatham dealt with a suit brought by potentially responsible parties ("PRPs") in a CERCLA action against other PRPs in order to get them to contribute to the cleanup cost at a CERCLA site in Florida.⁹ Several PRPs had settled their case with the United States and were seeking contribution on their response costs from other PRPs at the site.¹⁰

In 1970, Sapp Battery Salvage Service, Inc. ("Sapp Battery") began recycling spent lead-acid batteries at its facility near Cottendale, Florida.¹¹ The company was owned and operated by C. Brown Sapp.¹² The company bought spent lead-acid batteries, cut them open with a hay bailer, recovered the lead, and sold it to lead smelters.¹³ During the recycling process, acid was discharged onto the land and into a nearby swamp.¹⁴ Additionally, the spent battery casings contaminated with lead were dumped or buried at the site.¹⁵

By 1979, Sapp Battery was processing approximately 5,000 batteries a day.¹⁶ The batteries were purchased from scrap yards, businesses, and brokers.¹⁷ One of the scrap yards that sold spent batteries to Sapp Battery was Carolina Waste & Salvage, later incorporated as Carolina Scrap Processing, Inc. (hereinafter both will be referred to as "Carolina Scrap").¹⁸ Carolina Scrap was owned and operated at the time in question by Charles Cleveland.¹⁹

Neighbors began complaining of acidic runoff from the site.²⁰ In January 1980, Jerry Sapp, the son of C. Brown and at that time owner of the company, shut it down and walked away from the site.²¹

⁹*Id.* at 1130. *See also* Section 117(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B) (stating: "A person who has resolved his liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).").

¹⁰*Chatham*, 858 F. Supp. at 1130.

¹¹*Id.* at 1135.

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵*Chatham*, 858 F. Supp. at 1135.

¹⁶*Id.*

¹⁷*Id.* at 1135-1136.

¹⁸*Id.* at 1146.

¹⁹*Id.*

²⁰*Chatham*, 858 F. Supp. at 1135.

The contaminated site was placed on the National Priorities List ("NPL") by the Environmental Protection Agency ("EPA") in 1982.²² Ten years later, after years of investigation and study at the site, the EPA issued a Unilateral Administrative Order (UAO") against the plaintiffs Chatham Steel Corporation, Mr. Sapp, and Carolina Scrap (et al.).²³ Under Section 106 of CERCLA, 42 U.S.C. § 9606, the EPA has the authority to issue a PRP an administrative order ordering the PRP to take response actions at a site whenever there is an imminent or substantial endangerment to the public health or welfare of the environment because of an actual or threatened release of hazardous substances. The UAO required the named PRPs (including Chatham Steel Corporation) to clean up the site.²⁴ Once the UAO was issued, the PRPs so ordered were statutorily required to comply with the Order or be subject to treble damages (i.e., three times the amount of the United States' costs incurred in cleaning the site).²⁵

In 1993, Chatham (and dozens of other PRPs at the site), entered into a consent decree with the United States.²⁶ By signing the consent decree, Chatham and others entered into a settlement agreement with the United States agreeing to clean up the site and to pay the United States for the costs it incurred at the site.²⁷ Chatham Steel, et al. then sought to obtain assistance in the cleanup and financing of the cleanup from Mr. Sapp, Carolina Scrap, Charles Cleveland and other PRPs who did not join in the settlement with the United States.²⁸ All refused to contribute to the cleanup or pay the costs requested by Chatham

²¹*Id.* at 1136.

²²*Id.* See generally, Section 104 of CERCLA, 42 U.S.C. § 9604 (authorizing EPA to respond to releases, or threatened releases of hazardous substances, pollutants, or contaminants by taking actions to alleviate or eliminate the dangers these substances pose. Specifically, the Act authorizes EPA to: (1) remove or arrange for the removal of hazardous substances; (2) provide for remedial actions relating to hazardous substances; and (3) take any response measures consistent with the National Contingency Plan (NCP) which is deemed necessary to protect the public health, the public welfare, or the environment).

²³*Id.* at 1136. Under Section 106 of CERCLA, 42 U.S.C. § 9606, the EPA has the authority to issue a PRP an administrative order ordering the PRP to take response actions at a site whenever there is an imminent or substantial endangerment to the public health or welfare of the environment because of an actual or threatened release of hazardous substances.

²⁴*Chatham*, 858 F. Supp. at 1136.

²⁵Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3) (penalizing a defendant with treble damages for failure to comply with a UAO).

²⁶*Chatham*, 858 F. Supp. at 1136.

²⁷*Id.*

²⁸*Id.*

Steel.²⁹ In turn, Chatham Steel filed an action against Carolina Scrap and the other non-settling PRPs.³⁰

III. CERCLA LIABILITY

The congressional debates over CERCLA make it clear that Congress was aware that the costs of response actions at CERCLA sites would greatly exceed the monetary amount authorized by Superfund.³¹ Therefore, the Act was written in a manner to ensure that those responsible for any property damage, environmental harm or personal injury resulting from hazardous substances bear the costs of their actions.³² The statute ensures that monies expended by the United States during CERCLA response actions would be recovered from the responsible parties.³³

A. Overview of CERCLA Liability

Parties responsible for contamination at a CERCLA site are strictly liable for all of the United States' response costs (removal and/or remedial costs) associated with the clean up of the site as long as the costs incurred by the United States are not inconsistent with the National Contingency Plan ("NCP").³⁴ The amount of care utilized by the responsible party in handling the hazardous substances in question is irrelevant.³⁵ Additionally, if the harm at a

²⁹*Id.* See generally, 42 U.S.C. § 9613(f)(1) and (3) (stating that a PRP may seek contribution from any other PRP who has not settled with the United States. CERCLA specifically allows the settling PRP to bring a contribution action during or following a response action pursuant to an administrative order, pursuant to Section 106, and/or after a settlement with the United States).

³⁰*Chatham*, 858 F. Supp. at 1136.

³¹See S. Rep. No. 96-848, at 17-18; H.R. Rep. No. 96-1016 at 20 (1980).

³²See S. Rep. No. 96-848 at 13 (1980). See also *United States v. Aceto Agricultural Corp.*, 872 F.2d 1373, 1377 (8th Cir. 1989); *United States v. New Castle County*, 727 F. Supp. 854, 858 (D. Del. 1989).

³³42 U.S.C. § 9607(a) (1996). See also *United States v. Northeastern Pharmaceutical & Chemical Co. ("NEPACCO")*, 810 F.2d 726, 733 (8th Cir. 1986); *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 805 F.2d 1074, 1081 (1st Cir. 1986).

³⁴42 U.S.C. § 9607(a)(4)(A). See *Aceto Agricultural Corp.*, 872 F.2d at 1379. See also *United States v. Kramer*, 757 F. Supp. 397, 436 (D. N.J. 1991); *United States v. Western Processing Co., Inc.*, 734 F. Supp. 930, 942 (W.D. Wash. 1990).

³⁵See Section 101(32) of CERCLA, 42 U.S.C. § 9601(101)(32) (stating that the standard of liability under the Act is the same as Section 311 of the Clean Water Act, 33 U.S.C. § 1321). Liability under Section 311 of the Clean Water Act, 33 U.S.C. § 1321, is strict. See e.g., *United States v. M/V Big Sam*, 681 F.2d 432 (5th Cir. 1982); *United States v. Lebeouf Bros. Towing Co.*, 621 F.2d 787 (5th Cir. 1980), *cert. denied*, 452 U.S. 906 (1981); *United States v. Fleet Factors Corp.*, 901 F.2d 1550, 1554 (11th Cir. 1990), *cert. denied*, 498 U.S. 1046 (1991); *United States v. R.W. Meyer Ins.*, 889 F.2d 1497 (6th Cir. 1989), *cert. denied*, 494 U.S. 1057 (1990); *In Re Bell Petroleum Services, Inc.*, 3 F.3d 889, 897 (5th Cir. 1993).

CERCLA site is indivisible, the responsible parties are jointly and severally liable.³⁶

Liability under CERCLA extends to four categories of parties: (1) the current owner or operator of the facility³⁷ at which there is a release or threatened release of hazardous substances; (2) the past owner if he/she owned or operated the facility at the time of disposal of hazardous substances at the facility; (3) the person who arranged for disposal of hazardous substances at the facility; and (4) the person who transported the hazardous substances to the facility, if the transporter selected the facility as a disposal site.³⁸

Once liability is established, the statute only allows four defenses.³⁹ A party may defend if it can establish that the release or threatened release of hazardous

³⁶See *United States v. Monsanto Co.*, 858 F.2d 160 (4th Cir. 1988), *cert. denied*, 410 U.S. 1106 (1989); *United States v. Alcan Aluminum Corp.*, 964 F.2d 252, 267 (3rd Cir. 1992); *O'Neil v. Picillo*, 883 F.2d 176, 178 (1st Cir. 1989), *cert. denied sub nom.*, *American Cyanamid Co. v. O'Neil*, 493 U.S. 107 (1990). Volumetric contributions by themselves can not determine divisible harm because the volume of waste each party contributes (by itself) is not an accurate predictor of the potential harm to the public health and environment. To accurately determine the harm that each party contributed to a site, one must look at a myriad of factors including each chemical's toxicity, solubility, volatility and migratory potential. *United States v. Chem-Dyne Corp.*, 572 F. Supp. 802, 811 (S.D. Ohio 1983).

³⁷"Facility" is defined broadly under CERCLA Section 101(9), 42 U.S.C. § 9601(9) to include (among other things): any building, structure, installation, equipment, pipe or pipeline, well, pond, pit, lagoon, ditch, landfill, or any site where a hazardous substance has been deposited, stored, disposed of, placed or otherwise come to be located.

³⁸42 U.S.C. § 9607(a). See also, *Chatham*, 858 F.2d at 168. In its pertinent parts, Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) states:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section:

- (1) the owner 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, at any facility or incineration vessel owned or operated by another 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 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;

...

³⁹Section 107(b) of CERCLA, 42 U.S.C. § 9607(b), provides, in its relevant parts:

(b) There shall be no liability under subsection (a) of this section for

substances was caused by: (1) an act of God; (2) an act of war; (3) an act or omission of a third party; or (4) any combination of the previous three defenses.⁴⁰ No other defenses are allowed by the statute.⁴¹

B. CERCLA Liability and the Chatham Case

The plaintiffs in *Chatham* contended that Carolina Scrap (and others) were liable under Section 107(a)(3) of CERCLA as persons who "arranged for the disposal" (i.e., generators) of hazardous substances at the Site.⁴² Carolina Scrap (and several other defendants) argued that it could not be held liable under Section 107(a)(3) of CERCLA because it did not "arrange" for disposal.⁴³

The argument was essentially that it sold spent lead acid batteries to Sapp Battery and that after that, the handling of the scrap batteries became Sapp Battery's responsibility. For the reasons that follow, the court rejected this argument.

1. Defendant's Intent

First, Carolina Scrap argued that it was not liable under CERCLA because it did not "intend" to dispose or treat the spent lead-acid batteries when it sold them to Sapp.⁴⁴ However, nowhere in the language of Section 107(a)(3) does the word "intent" or "intend" appear.⁴⁵ Additionally, CERCLA is a strict liability

a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third party other than an employee or agent of the defendant, other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
- (4) any combination of the foregoing paragraphs.

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Chatham*, 858 F. Supp. at 1137. See 42 U.S.C. § 9607(a)(3).

⁴³*Chatham*, 858 F. Supp. at 1138.

⁴⁴*Id.*

⁴⁵*Id.* See 42 U.S.C. § 9607(a)(3).

statute.⁴⁶ Thus, Carolina Scrap's lack of intent does not serve as a defense to CERCLA liability.⁴⁷ Moreover, the court found that the defendant did, indeed, intend to traffic in hazardous substances.⁴⁸ This is precisely the type of activity that CERCLA was created to cover.⁴⁹ The product it sold, spent lead-acid batteries, could no longer generate electrical current, and therefore, its only usefulness came through the residual value of the batteries' hazardous casing, i.e. the lead.⁵⁰ The court found that Carolina Scrap took a product that it no longer had a use for and sold it for breaking, processing, treatment, and then, for disposal of any remaining wastes.⁵¹

2. Defendant's Knowledge

Carolina Scrap next contended that it did not know where or how Sapp Battery was treating or disposing of the batteries.⁵² Defendant argued that it could not have "arranged for" disposal or treatment without knowledge.⁵³ Yet, this argument fails for the same reason as the intent argument; CERCLA is a strict liability offense.⁵⁴ Courts have consistently held that a defendant need not know where or how a hazardous substance was to be disposed of or treated to be liable under Section 107(a)(3).⁵⁵ As the Court stated in *United States v. Ward*:

⁴⁶*Chatham*, 858 F. Supp. at 1138. See Section 101(32) of CERCLA, 42 U.S.C. § 9601(32) (providing that the standard of review under CERCLA is the same as Section 311 of the Clean Water Act, 33 U.S.C. § 1321; liability under Section 311 of the Clean Water Act is strict). See also *United States v. Aceto Agric. Chems. Corp.*, 872 F.2d 1373, 1379 (8th Cir. 1989), (stating that responsible parties are strictly liable for response costs incurred); *3550 Stevens Creek Associates v. Barclays Bank*, 915 F.2d 1355, 1357 (9th Cir. 1990) (stating CERCLA generally imposes strict liability on owners and operators of facilities at which hazardous substances were disposed); *R.W. Meyer Inc.*, 889 F.2d at 1497, 1507 (stating CERCLA contemplates strict liability); see generally, *Fleet Factors Corp.*, 901 F.2d at 1550, 1554; *In re Bell Petroleum Service, Inc.*, 3 F.3d at 889, 897.

⁴⁷*Chatham*, 858 F. Supp. at 1139. See also at 724 ("Section 9607(a)(3) liability may attach even if the potentially responsible party did not intend to dispose of the hazardous substances").

⁴⁸*Chatham*, 858 F. Supp. at 1140.

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹*Id.* at 1141. See generally Section 103(3) and 103(34) of CERCLA, 42 U.S.C. §§ 9603(3) and 9603(34) (respectively) (defining "disposal" and "treatment").

⁵²*Chatham*, 858 F. Supp. at 1142.

⁵³*Id.*

⁵⁴*Id.* See *supra* note 45 and accompanying text.

⁵⁵*Id.* at 1142. See *Aceto Agric. Chems. Corp.*, 872 F.2d at 1381 (stating CERCLA liability attaches "even when defendants did not know the substances would be deposited at that site or in fact believed they would be deposited elsewhere"); *United States v. Ward*, 618 F. Supp. 884, 895 (E.D.N.C. 1985) (holding that a generator is still strictly liable under

[t]he assertion that CERCLA requires a generator who arranges for disposal to know where the disposal takes place before liability is established is unfounded...

[T]he statute merely provides that a generator "who arranged for disposal or treatment"... of the generator's hazardous substances at a "facility" not owned by the generator would still be strictly liable under CERCLA.⁵⁶

Generators cannot escape CERCLA liability by simply claiming "they did not know."⁵⁷ The *Chatham* court found that reading a knowledge requirement into Section 107(a)(3) of CERCLA would simply encourage generators to "play dumb" in order to escape liability; therefore, Carolina Scrap could not eschew its responsibilities under CERCLA because it allegedly did not know the location or method of the disposal or treatment of its hazardous substances.⁵⁸

3. Defendant's Decision

Finally, Carolina Scrap argued that it should not be held liable under Section 107(a)(3) of CERCLA because it did not ultimately make the decision regarding lead-acid batteries' treatment or disposal.⁵⁹ The court agreed that the "decision test" was relevant to the analysis of Section 107(a)(3) liability.⁶⁰ Yet, the court did not find this test to be exculpatory.⁶¹ Rather, the court held that Carolina Scrap (and the other named generators) did indeed make the crucial decision as to how, when and by whom their hazardous substance, spent lead-acid batteries, would be disposed and treated.⁶² Carolina Scrap decided that Sapp Battery would treat and dispose of its spent lead-acid batteries.⁶³

Ultimately, the court rejected defendant's contention that it was not liable as a generator who "arranged for disposal and treatment" within the meaning of CERCLA.⁶⁴ Section 107(a)(3) does not require intent or knowledge.⁶⁵ The court

CERCLA even if the generator does not know where the disposal takes place).

⁵⁶ *Ward*, 618 F. Supp. at 895 (emphasis added).

⁵⁷ *Id.*

⁵⁸ *Chatham*, 858 F. Supp. at 1142 (quoting *Ward*, 618 F. Supp. at 895).

⁵⁹ *Id.*

⁶⁰ *Id.* See *United States v. A & F Materials*, 582 F. Supp. 842, 845 (S.D. Ill. 1984) (stating 107(a)(3) liability is not endless; generators must make the crucial decision of how their hazardous substances are to be disposed of or treated).

⁶¹ *Chatham*, 858 F. Supp. at 1143.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Chatham*, 858 F. Supp. at 1143. See *supra* notes 46 and 54 and accompanying text.

held that the defendant "decided" to send its spent lead-acid batteries to Sapp for treatment and disposal.⁶⁶ Therefore, the defendant, Carolina Scrap, was a generator of hazardous substances and liable pursuant to CERCLA (even though the transaction involved a middleman).⁶⁷ However, this did not end the court's analysis of the case.⁶⁸ After determining that Carolina Scrap was within the class of persons upon which CERCLA imposes liability,⁶⁹ the court analyzed and discussed the issue of personal jurisdiction as it related to the company.⁷⁰

IV. JURISDICTION

In determining whether it had personal jurisdiction over Carolina Scrap, the *Chatham* court first determined whether Florida's long-arm statute even authorized an exercise of jurisdiction.⁷¹ Then, it determined whether Carolina

⁶⁶*Chatham*, 858 F. Supp. at 1143.

⁶⁷*Id.* at 1144.

⁶⁸*Id.*

⁶⁹*Id.* at 1137. The Court specifically rejected defendant's argument that it could not be liable under CERCLA as a generator who "arranged for" disposal and treatment unless it could be proven that defendant specifically intended for Sapp Battery to treat or dispose of the spent batteries and /or the defendant had knowledge of how and where Sapp Battery was conducting the disposal. *See United States v Fleet Factors*, 821 F. Supp. 707, 724 (S.D. Ga. 1993) (stating: "Section 9607(a)(3) liability may attach even if the potentially responsible party did not intend to dispose of the hazardous substances"); *Ward*, 618 F. Supp. at 884, 895 (D.C.N.C. 1985) (stating that reading a knowledge requirement into Section 107(a)(3) of CERCLA would simply encourage generators to escape liability by "playing dumb" regarding the disposal of their hazardous wastes). *See generally* CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3) (imposing liability upon any person who contracts, agrees, or otherwise arranges for the disposal or treatment of hazardous substances, owned or possessed by such person, with another person, at a facility owned or operated by another person. That is to say, a generator of hazardous substances is liable if: it owned or possessed hazardous substances; the generator contracted or arranged for the disposal or treatment of hazardous substances at a site; the substances were transported to the site; and they were disposed of at the site upon which a release or threatened release of similar hazardous substances has occurred).

⁷⁰*Id.* at 1143. (The Court also specifically rejected the argument asserted by Cleveland, Carolina Scrap and other defendants that they did not "arrange for" disposal and treatment of hazardous substances (within the meaning of CERCLA) when they "sold" spent lead-acid batteries to Sapp Battery). *See generally*, *Chesapeake and Potomac Tel. Co. v. Peck Iron & Metal*, 814 F. Supp. 1269 (E.D. Va. 1992) and *United States v. Pesses*, 794 F. Supp. 151 (W.D. Pa. 1992) (holding sellers of spent batteries "arranged for the treatment or disposal" of hazardous substances); *A & F Materials, Inc.*, 582 F. Supp. at 842, 845 (holding that a company's sale of spent caustic solutions to A & F which used the solution to neutralize acidic oils, constituted an arrangement for disposal within the meaning of CERCLA); *Ward*, 618 F. Supp. at 895 (stating that liability under CERCLA cannot be avoided by merely characterizing the transaction in question as a sale).

⁷¹*Chatham*, 858 F. Supp. at 1146.

Scrap had sufficient minimum contacts with Florida to satisfy constitutional Due Process requirements.⁷²

A. Long-Arm Jurisdiction

The court relied heavily on the cases of *United States v. Conservation Chemical Co.* ("Conservation Chemical II")⁷³ and *United States v. Consolidated Rail Corp.*⁷⁴ in order to decide whether Florida's long-arm statute could be applied to Carolina Scrap.⁷⁵

Conservation Chemical II involved a chemical company, Conservation Chemical Company ("CCC"), that owned and operated an industrial chemical waste facility in Kansas City, Missouri.⁷⁶ Over the years, the CCC site became contaminated with numerous hazardous chemicals.⁷⁷ As part of the case, the court was required to determine if it could exercise jurisdiction over the nonresident generators of hazardous waste.⁷⁸ As a prerequisite, the court had to determine if Missouri's long-arm statute could be applied to the release or threatened release of hazardous substances under CERCLA.⁷⁹ Since the long-arm statute did not specifically mention CERCLA (or any other environmental statute), the court was required to determine if the actions of hazardous waste generators could be properly characterized as one of the enumerated acts within the statute, i.e., a tort.⁸⁰

To construe the generator's acts as a tort, the court was required to find that the generators had a duty, there was a breach of that duty, and the breach of duty proximately caused an injury.⁸¹ Moreover, longstanding case law has held that to give rise to tortious liability, the duty must be created and imposed by

⁷²*Id.* See generally, *Pennoyer v. Neff*, 95 U.S. 714 (1877) (requiring certain minimum contacts with a forum state before in personam jurisdiction can be constitutionally exercised).

⁷³*United States v. Conservation Chemical Co.* ("Conservation Chemical II") 619 F. Supp. 162 (W.D. Mo. 1985).

⁷⁴*United States v. Consolidated Rail Corp.*, 674 F. Supp. 138 (D. Del. 1987).

⁷⁵*Chatham* 858 F. Supp. at 1142. See *Conservation Chemical II*, 619 F. Supp. at 245; *Consolidated Rail*, 674 F. Supp. at 143.

⁷⁶*Conservation Chemical II*, 619 F. Supp. at 182.

⁷⁷*Id.* at 183. The record shows that the surface soils, subsurface soils, surface water, and groundwater all contained such hazardous chemicals as methylene chloride, trichloroethylene, 1,1,1-trichloroethane, toluene, cadmium, lead, selenium, benzene, arsenic and cyanide.

⁷⁸*Id.*

⁷⁹*Id.*

⁸⁰619 F. Supp. 245.

⁸¹*Id.* See also *Munger v Equitable Life Assur. Soc. of U.S.*, 2 F. Supp. 914, 920 (W.D. Mo. 1933) (holding that an unreasonable delay in processing a life insurance policy does not satisfy the three elements necessary for liability in tort).

law.⁸² After reviewing the case law, the court found that the release of hazardous substances creating an imminent danger to the public health, welfare, property, and/or environment was in the nature of a tort.⁸³ Additionally, the generator's actions outside of the state that led to actionable consequences in Missouri were "commissions of a tortious act in the state" within the meaning of the Missouri long-arm statute.⁸⁴

In *Consolidated Rail Corp.*, the United States brought an action against several PRPs to recover response costs for its clean-up of hazardous waste at the Sealand disposal site (hereinafter referred to as "Sealand or "the Site") in Delaware.⁸⁵ Consolidated Rail Corp. ("Conrail") and other defendants filed an action against the Globe Newspaper Company (hereinafter referred to as "Globe") and others seeking indemnification and/or contribution pursuant to Section 107 of CERCLA.⁸⁶ As in *Conservation Chemical*, the court had to determine if the state's long-arm statute established jurisdiction over out-of-state generators of hazardous waste.⁸⁷ As in *Conservation Chemical II*, the court in *Consolidated Rail Corp.* utilized the language in the state's long-arm statute relating to extraterritorial actions that have consequences within the state.⁸⁸ The court found that Section 3104(c)(4) of Delaware's long-arm

⁸²*Conservation Chemical II*, 619 F. Supp. at 245. See also *Donovan v. Kansas City*, 175 S.W. 2d 874, 882, modified 179 S.W.2d 108 (Mo. 1944) (stating: "To give rise to an action in tort, the right violated must have been created and the corresponding duty must have been imposed by law").

⁸³*Id.* at 246. See *Fulton v. Chicago, Rock Island & Pacific R.R. Co.*, 481 F.2d 326, 331-33 (8th Cir. 1973)(interpreting "tort" and "commission of a tortious act" to include extraterritorial acts producing actionable consequences in Missouri under Missouri's long-arm statute); *United States v. Mottolo*, 629 F. Supp. 56, 60 (D.N.H. 1984) (finding that corporate officers who participate in activities that lead to the release of hazardous substances may be individually liable for their "tortious conduct" under CERCLA). See also *United States v. Shamrock Barge*, 635 F.2d 1108, 1112 (4th Cir. 1980)(analogizing comparable provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, to tort law).

⁸⁴*Id.* at 246. See *Fulton v. Chicago, Rock Island & Pacific R.R. Co.*, *supra* note 43, at 331 (construing the "commission of tortious act" within the state to include extraterritorial torts that lead to consequences within the state). See generally American Law Institute's Restatement (Second) of Conflict of Law § 37(a)(1971) (stating "one who intentionally shoots a bullet into a state is as subject to the judicial jurisdiction of the state as to causes of action arising from the effects of the shot as if he had actually fired the bullet in the state").

⁸⁵*Consolidated Rail Corp.*, 674 F. Supp. at 141.

⁸⁶*Id.* See 42 U.S.C. § 9607. See also *supra* note 26 (and accompanying text)(explaining the right of contribution under CERCLA).

⁸⁷*Consolidated Rail Corp.*, 647 F. Supp. at 142. See also *Conservation Chemical II*, 619 F. Supp. at 242.

⁸⁸*Consolidated Rail Corp.*, 647 F. Supp. at 143; *Conservation Chemical II*, 619 F. Supp. at 248.

statute⁸⁹ granted jurisdiction over the Globe because its out-of-state actions caused in-state tortious injuries.⁹⁰

The *Chatham* court utilized the same reasoning as the courts in *Conservation Chemical II* and *Consolidated Rail Corp.* and concluded that Virginia's long-arm statute could be applied to exercise jurisdiction over the extraterritorial generators of hazardous waste.⁹¹ The court also determined that the *Chatham* case was analogous to cases where courts have found violations of other federal statutes to be "tortious" acts under Florida's long-arm statute.⁹² Carolina Scrap's "arrangement" with Sapp Battery for the disposal and/or treatment of spent lead-acid batteries helped to ultimately create a serious environmental hazard in the state of Florida.⁹³ Adopting the logic of *Conservation Chemical II* and *Consolidated Rail Corp.*, the court in *Chatham* held that Carolina Scrap was subject to Florida's jurisdiction because Carolina Scrap's extraterritorial actions assisted in the commission of a tortious act in Florida (within the meaning of the Florida statute).⁹⁴

B. In Personam Jurisdiction

Once the court determined that Florida's long-arm statute conferred jurisdiction over Cleveland, it had to determine whether the exercise of that

⁸⁹DEL. CODE ANN. tit. 10, § 3104(c)(4)(Supp.1986).

⁹⁰*Consolidated Rail Corp.*, 647 F. Supp. at 142. See also DEL. CODE ANN. tit. 10, § 3104(c)(4)(Supp. 1986)(stating that the court may exercise jurisdiction over any person or corporation that: "[c]auses tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State"). The Court concluded that statute allowed it to exercise jurisdiction over Globe because Globe's action caused tortious injury (i.e., environmental harm) within the state, and by selling newspapers in Delaware, Globe derived substantial revenue from the state.

⁹¹*Chatham*, 858 F. Supp. at 1146.

⁹²*Id.* See e.g., *Cable/Home Communication*, 902 F.2d 829, 856 (11th Cir. 1990) (finding violations of federal copyright and communications laws to be sufficient to trigger Florida long-arm jurisdiction); *Williams Electric Co., Inc. v. Honeywell, Inc.*, 854 F.2d 389, 394 (11th Cir. 1988)(holding that violations of federal anti-trust laws constitutes tortious behavior within the meaning of the Florida Long-arm statute).

⁹³*Chatham*, 858 F. Supp. at 1146.

⁹⁴*Id.* See also, FLA. STAT. Ch. 48.193(1)(b)(1997) (stating in its pertinent parts:

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

...

(b) Committing a tortious act within this state.

jurisdiction violated the Due Process clause of the 14th Amendment.⁹⁵ This required a determination of whether the exercise of in personam jurisdiction was in accordance with long-standing case law.

In personam, that is to say, personal jurisdiction, quite simply is the concept relating to a court's power to bind a particular defendant to its judgment.⁹⁶ It should not be confused with service of process. Service of process is the procedure by which a defendant is notified of a pending action.⁹⁷ However, the law of jurisdiction is not concerned with notice.⁹⁸ Rather, when examining jurisdiction, one examines the power of a court to determine a defendant's obligations and the propriety of the court in doing so.

More specifically, in personam jurisdiction delimits a court's utilization of its power to render an enforceable judgment against a defendant.⁹⁹ The United States Supreme Court has long recognized that personal jurisdiction is based upon the sovereign's power over the person of the defendant.¹⁰⁰ In personam jurisdiction represents the court's authority to command personal obedience and impose personal obligations. The primary notion being that a court gains its power over a person as a direct result of the sovereign's authority over persons within its territory.¹⁰¹ Without personal jurisdiction, a court cannot impose personal liability upon a defendant or affect a defendant's personal rights.¹⁰² By this reasoning, before the court in *Chatham* could impose CERCLA liability upon the defendant, it was required to determine its jurisdiction over the defendant.

1. Overview of Personal Jurisdiction

In *Pennoyer v. Neff*,¹⁰³ the Court held that a court's authority to adjudicate is restricted to the territorial limits of the state in which it is established.¹⁰⁴ In

⁹⁵*Chatham*, 858 F. Supp. at 1146. See generally, William M. Richman, *Understanding Personal Jurisdiction*, 25 ARIZ. ST. L.J. 599 (1993)(for a more detailed discussion on in personam jurisdiction); Fullerton, *Constitutional Limits On Nationwide Personal Jurisdiction In the Federal Courts*, 79 NW. U. L. REV. 1 (1984)(arguing that the Fifth Amendment limits personal jurisdiction and should be used to limit nationwide jurisdiction).

⁹⁶See Robert H. Abrams, *Power, Convenience, and the Elimination of Personal Jurisdiction in the Federal Courts*, 58 IND. L.J. 1, 4 (1982).

⁹⁷*Id.*

⁹⁸Jay Conison, *What Does Due Process Have to Do With Jurisdiction*, 46 RUTGERS L. REV. 1071, 1074 (1994).

⁹⁹See *Burnham v. Superior Court of California*, 495 U.S. 604, 609 (1990).

¹⁰⁰*Pennoyer*, 95 U.S. at 720.

¹⁰¹Janice Toran, *Federalism, Personal Jurisdiction, and Aliens*, 58 TUL. L. REV. 758, 758-70 (1984).

¹⁰²See *Burnham*, 495 U.S. at 609.

¹⁰³See *supra* note 72.

1945, in the case of *International Shoe v. State of Washington*,¹⁰⁵ the Court departed from the traditional logic of *Pennoyer* which emphasized sovereignty as a prerequisite to jurisdiction and the power to validly bind an individual to a court's judgment.¹⁰⁶ *International Shoe* amended and expanded *Pennoyer* by emphasizing constitutional due process rather than traditional sovereignty.¹⁰⁷ Unlike *Pennoyer*, *International Shoe* focused on the rights of the defendant, which is appropriate since the right of due process as it relates to jurisdiction is only possessed by the defendant.¹⁰⁸

International Shoe clearly established two constitutional themes relevant to the exercise of personal jurisdiction.¹⁰⁹ These are fairness and sovereign power.¹¹⁰ The Supreme Court made it clear that the Constitution would not allow a court to make a binding in personam judgment against a party that had no contacts, ties, or relation to the court's state.¹¹¹ Rather, for a court to successfully exercise in personam jurisdiction, the party in question must have certain minimum contacts with the state (that is, the situs of the court) such that the maintenance of the suit does not offend traditional notions of fair play and justice.¹¹²

In the *Chatham* case, the constitutional criteria of *International Shoe* was addressed. At the time in question, Carolina Scrap did not own property in Florida, have offices in Florida, or even have a license to do business in Florida.¹¹³ As a matter of fact, aside from its dealings with Sapp Battery, Carolina Scrap did not have any contacts with the State of Florida.¹¹⁴ So, in

¹⁰⁴*Id.*

¹⁰⁵*International Shoe v. State of Washington*, 326 U.S. 310 (1945).

¹⁰⁶*Pennoyer*, 95 U.S. at 722. See Fullerton, *supra* note 95, at 9 (stating that *International Shoe* jettisoned *Pennoyer's* test in favor of a Due Process analysis).

¹⁰⁷*International Shoe*, 326 U.S. at 319 (1945).

¹⁰⁸Mona A. Lee, *Burger King's Bifurcated Test for Personal Jurisdiction: The Reasonableness Inquiry Impedes Judicial Economy And Threatens A Defendant's Due Process Rights*, 66 Temple Law Rev. 945, 947 (1993). See also, Daan Braverman, *Interstate Federalism and Personal Jurisdiction*, 33 SYRACUSE L. REV. 533, 542 (1982) (discussing fairness to defendants as it relates to the Due Process clause); David A. Sornenshein, *The Error of A Balancing Approach To The Determination Of Jurisdiction Over The Person*, 59 TEMP. L. Q. 47, 48 (1986) (arguing that it is not appropriate for a court to balance a plaintiff's interest against a defendant's when considering due process in the context of personal jurisdiction).

¹⁰⁹Kevin M. Clermont, *Restating Territorial Jurisdiction and Venue for State and Federal Courts*, 66 CORNELL L. REV. 411, 415 (1981).

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²*Id.* at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

¹¹³*Chatham*, 858 F. Supp. at 1143.

¹¹⁴*Id.* at 1145.

determining jurisdiction, the court was obliged to consider the constitutional constraints of "minimum contacts and fairness," as well as the application of the forum state's long-arm statute.¹¹⁵

The Supreme Court has made it clear that pre-litigation contacts between the defendant and the forum state are a prerequisite to exercising long-arm jurisdiction. In the words of the Court:

[T]he Due Process Clause "does not contemplate that a state may [exercise jurisdiction over] . . . an individual . . . with which the state has no contacts, ties, or relations." Even if the defendant would suffer minimal or no inconvenience . . .; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for the litigation, the Due Process Clause . . . may sometimes divest the State of power to render a valid judgment.¹¹⁶

2. Minimum Contacts

In order to comport with the requisite constitutional delimitation, a court can only exercise in personam jurisdiction if a defendant has had certain minimum contacts with the state, and the exercise of jurisdiction in the particular case seems just and fair.¹¹⁷ It is obvious that this limitation is anything but straightforward. Such a standard is highly subjective and difficult to apply.¹¹⁸ Consequently, courts and parties alike have struggled in determining what "minimum contacts" and "fairness" mean in the jurisdictional context.¹¹⁹ Of course, any confusion related to vague theories of fairness and minimum contacts is only exacerbated in a case like *Chatham*, where a defendant may be already confused by the terminology of CERCLA.

In evaluating a defendant's minimum contacts, courts have distinguished between contacts establishing "specific" and "general" jurisdiction.¹²⁰ Specific jurisdiction is the authority of a court over a nonresident defendant in a lawsuit arising from or related to the defendant's specific contacts with the forum

¹¹⁵*Id.* at 1146.

¹¹⁶Richman, *supra* note 94, at 612 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980)).

¹¹⁷*Id.*

¹¹⁸*See, International Shoe*, 326 at 325 (Black, J., concurring). *See also*, David S. Welkowitz, *Beyond Burger King: The Federal Interest Personal Jurisdiction*, 56 *FORDHAM L. REV.* 1, 3 (discussing the ambiguity inherent in the fairness doctrine espoused by the Court in *International Shoe*).

¹¹⁹*Id.*

¹²⁰*Shaffer v. Heitner*, 433 U.S. 186, 204 (1977).

state.¹²¹ General jurisdiction is also based upon a defendant's contacts with the forum state, but the contacts are unrelated to the cause of action.¹²²

The *Chatham* court decided its case using specific jurisdiction, since the cause of action was specifically based upon the defendant's contacts (albeit indirect contacts) with the state.¹²³ The court used the criteria established in the Eleventh Circuit case, *Vermuelen v. Renault U.S.A., Inc.*¹²⁴ In *Vermuelen*, the court established three criteria relative to minimum contacts prior to the application of specific jurisdiction: 1) The contacts must be related to or have given rise to the plaintiff's cause of action;¹²⁵ 2) the contacts must involve some act(s) by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state, thereby invoking the benefits and protection of its laws;¹²⁶ and 3) the contacts must be such that the defendant can reasonably anticipate being haled into court in the forum state.¹²⁷

Following *Vermuelen's* reasoning, the court found that Carolina Scrap's contacts with the State of Florida were related to the cause of action,¹²⁸ plaintiff's cause of action was one to recover a portion of its response costs for the environmental cleanup of an abandoned battery recycling facility from Carolina Scrap,¹²⁹ and Carolina Scrap's contacts with the forum were through the sale of spent lead acid batteries to the owner and operator of the facility for processing and treatment.¹³⁰ The court also concluded that Carolina Scrap "purposefully availed" itself of the privilege of conducting business in Florida,¹³¹ in that the defendant sold its scrap batteries to a Florida company for proces-

¹²¹*Chatham*, 858 F. Supp. at 1146. See also, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473, n. 15; and *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414, nn. 8 and 9 (1984).

¹²²*Id.*

¹²³*Chatham*, 858 F. Supp. at 1147. The court held that the plaintiffs had not claimed that Carolina Scrap had sufficient contacts with Florida to establish general jurisdiction.

¹²⁴*Chatham*, 858 F. Supp. at 1147. See *Vermuelen v. Renault U.S.A., Inc.*, 985 F.2d 1534 (11th Cir.).

¹²⁵*Chatham*, 858 F. Supp. at 1147. See *Vermeulen*, 985 F.2d at 1546. See also *Burger King Corp.*, 471 U.S. at 472; *Madara v. Hall*, 916 F.2d 1510, 1516 (11th Cir. 1990).

¹²⁶*Chatham*, 858 F. Supp. at 1147. See *Vermeulen*, 985 F.2d at 1546 (quoting *Hanson v. Denckla*, 375 U.S. 235, 253 (1958)).

¹²⁷*Chatham*, 858 F. Supp. at 1147. See *Vermeulen*, 985 F.2d at 1546 (quoting *World-wide Volkswagen*, 444 U.S. at 297).

¹²⁸*Chatham*, 858 F. Supp. at 1147.

¹²⁹*Id.*

¹³⁰*Id.*

¹³¹*Id.*

sing and disposal.¹³² In this manner, the defendant benefitted from Sapp's Florida business.¹³³

The court struggled with the third criteria, i.e., should the defendant's contacts have reasonably led it to anticipate being haled into court.¹³⁴ One very large hurdle the court had to jump was the fact that at the time the defendant sold its scrap batteries, CERCLA did not exist.¹³⁵ Nevertheless, the court reasoned that there was an environmental statute in effect governing the handling of hazardous waste at the time in question, the Resource Conservation and Recovery Act ("RCRA").¹³⁶ Therefore, the court reasoned that the defendant was aware of its responsibilities under federal law to properly store, treat, transport and dispose of its hazardous waste.¹³⁷ Certainly, defendant knew or should have known that if its actions contributed to the improper disposal of hazardous substances in the forum it could be haled into federal court to answer for the illegal dumping of hazardous waste.¹³⁸ The court held that by dealing with a Florida company for the treatment and disposal of its hazardous substances, the defendant should have foreseen the possibility of being haled into a Florida court if there was any environmental litigation resulting from this business transaction.¹³⁹

The *Chatham* court's analysis is consistent with the Supreme Court's holding in *World-Wide Volkswagen*,¹⁴⁰ where (as in *Chatham*) there were no direct contacts with the forum and the defendant.¹⁴¹ However, the Supreme Court held that a court may properly exercise personal jurisdiction over a nonresident defendant that places a product into the stream of commerce with the expectation that the product will be purchased by consumers in the forum state.¹⁴² Clearly, by selling its spent lead-acid batteries to a Florida battery recycling company, the defendant should have reasonably expected the batteries to become located in Florida.

¹³²*Id.*

¹³³*Chatham*, 858 F. Supp. at 1147.

¹³⁴*Id.* at 1148.

¹³⁵*Id.* See also *supra* note 2.

¹³⁶*Chatham*, 858 F. Supp. at 1148; see 42 U.S.C. 6901 *et seq.* (RCRA was enacted in 1976).

¹³⁷*Id.*

¹³⁸*Id.*

¹³⁹*Id.* See also *Conservation Chemical Co.*, 619 F. Supp. at 249 (concluding that a generator can reasonably anticipate being haled into a court in any state where defendant's hazardous substances have been released).

¹⁴⁰See generally, *World-Wide Volkswagen*, 326 U.S. at 319.

¹⁴¹*Id.*

¹⁴²*Id.* at 297-98.

Although the court did not mention it, the *Chatham* court's analysis is also consistent with the holding of the Supreme Court in *Burger King v. Rudzewicz*.¹⁴³ In *Burger King*, the Supreme Court held that an action of the defendant must be purposefully directed toward the forum state as a prerequisite to a court finding minimum contacts with the state.¹⁴⁴ In *Chatham*, the court correctly concluded that the defendant placed its hazardous substances into the hands of Sapp Battery, knowing that the batteries only had value to Sapp Battery because it could recycle them in Cottondale, Florida and recover the lead.¹⁴⁵ The defendant directed the batteries toward Florida.

The *Chatham* analysis is also consistent with many other court opinions in that courts have often held that the minimum contacts test is not merely an exercise in quantitative analysis.¹⁴⁶ Rather, when determining whether a defendant's contacts with the forum are sufficient to reasonably anticipate being haled into the forum's courts, one must consider the nature and/or quality of the contacts as well as their number.¹⁴⁷ When courts have considered the nature and/or quality of defendant's contacts, many have held that if defendant's contacts with the forum are dangerous or hazardous in nature, those contacts may be sufficient to satisfy due process even though the number of contacts is few.¹⁴⁸

¹⁴³471 U.S. 462.

¹⁴⁴See *Burger King*, 471 U.S. at 476-77. See also, *Asahi Metal Industry Co. v. Superior Court*, 107 S.Ct. 1026, 1032 (1987) (quoting *Burger King*, 471 U.S. at 475) (holding that there must be a substantial connection between the defendant and the forum state showing that the defendant purposely directed action toward the forum state). See generally, *Welkowitz*, *supra* note 118 (examining the problem of personal jurisdiction in federal courts and developing an analytical framework for resolving personal jurisdiction questions).

¹⁴⁵858 F. Supp. at 1148.

¹⁴⁶See *Velandra v. Regie Nationales des Usines Renault*, 336 F.2d 292, 298 (6th Cir. 1968); *Allied Towing v. Great Eastern Petroleum Corp.*, 642 F. Supp. 1339 (E.D. Va. 1986); *Securities and Exchange Commission v. Meyers*, 285 F. Supp. 743, 749 (D. Md. 1968).

¹⁴⁷*Id.*

¹⁴⁸See *World-Wide Volkswagen*, 444 U.S. at 306 (Brennan, J., dissenting) (quoting *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493 (1971): "(C)orporations having no direct contact with Ohio could constitutionally be brought to trial in Ohio because they dumped pollutants outside Ohio's limits which ultimately . . . reached Ohio. No corporate acts, only their consequences, occurred in Ohio. The stream of commerce is just as natural a force as a stream of water . . ."). See also *Velandra*, 336 F.2d at 298 (stating that a lesser volume of dangerous products constitutes a more significant contact than would a larger volume of products offering little or no hazards to inhabitants of the state); *Chattanooga v. Klingler*, 528 F. Supp. 372, 378 (E.D. Tenn. 1981) (*reversed on other grounds*, 704 F.2d 903 (6th Cir. 1983) (noting that constitutionally required contacts may be minimized if they involve the placing of a dangerous instrumentality into the stream of commerce; *Lichina v. Futura*, 260 F. Supp. 252, 257 (D. Colo. 1966) ("Because the safety of the public is at stake, the sale of a dangerous product is regarded as a more substantial contact than the sale of a harmless one.")).

3. Fairness

Having concluded that the defendant's contacts with the forum were sufficient to satisfy due process, the *Chatham* court next addressed the issue of whether the exercise of jurisdiction over the defendant comports with "traditional notions of fair play and substantial justice."¹⁴⁹ In *International Shoe*, the Supreme Court went far beyond the ideas of territorialism and sovereignty expressed in *Pennoyer*.¹⁵⁰ *International Shoe* curtailed the exercise of personal jurisdiction by constitutionally circumscribing a court's jurisdictional power with notions of "fairness and justice."¹⁵¹ Fairness, i.e., the relationship among the defendant, the forum, and the litigation, rather than the mutual exclusive sovereignty of the states is the central concern of a court's inquiry into personal jurisdiction.¹⁵²

Over the past decade and a half, the Supreme Court has indicated that fairness or reasonableness (along with contacts) is part of a mandatory two-stage test for jurisdiction.¹⁵³ In determining the fairness of exercising jurisdiction in *Chatham*, the court looked to the following factors: 1) the burden on the defendant; 2) the forum state's interest in adjudicating the dispute; 3) the plaintiff's interest in obtaining convenient and effective relief; 4) the interstate judicial system's interest in obtaining convenient and effective relief; and 5) the shared interest of the several states in furthering fundamental substantive social policies.¹⁵⁴ The court understood that these considerations can serve to establish the reasonableness (fairness) of jurisdiction upon a lesser showing of minimum contacts.¹⁵⁵

¹⁴⁹*Chatham*, 858 F. Supp. at 1148. See also *International Shoe*, 326 U.S. at 316.

¹⁵⁰See 2 J. Moore; Moore's Federal Practice §4.25 [5] (2nd ed. 1982); 4 C. Wright & A. Miller 2223-34.

¹⁵¹*Id.* See also Connors, *supra* note 4 at 634 (1987)(stating *International Shoe* elevated fairness in determining a litigation site to a constitutional level); Abrams, *supra* note 96 at 12 (stating *Pennoyer* stressed the state's sovereign power, and *International Shoe* spoke of concern for fair treatment of the defendant as a constitutional limitation of a court's power); Toran, *supra* note 101 at 760 (stating *International Shoe* expressly rejected territoriality as a basis for jurisdiction).

¹⁵²Alex Wilson Albright, *In Personam Jurisdiction: A Confused and Inappropriate Substitute for Forum Non Conveniens*, 71 TEX. L. REV. 351, 386 (1992).

¹⁵³See *World-Wide Volkswagen*, 444 U.S. at 292; *Burger King*, 471 U.S. at 476-77; *Asahi*, 107 S. Ct. at 116.

¹⁵⁴*Chatham*, 858 F. Supp. at 1148. See also, *Burger King*, 471 U.S. at 477 (quoting *World-Wide Volkswagen*, 444 U.S. at 292)

courts . . . may evaluate "the burden on the defendant," "the forum state's interest in adjudicating the dispute," the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies.

¹⁵⁵*Chatham*, 858 F. Supp. at 1148; see *Burger King*, 471 U.S. at 477.

a. "Burden"

According to the Supreme Court, the burden on a defendant is always a primary concern.¹⁵⁶ However, the *Chatham* court determined that the burden on the defendant was insignificant.¹⁵⁷ The court based this on the fact that the distance between South Carolina and the Northern District of Florida is not great.¹⁵⁸ The court posited that thus far, neither the defendant nor its attorney had to travel to Florida for hearings.¹⁵⁹ Moreover, the court observed that if the defendant did go to trial, it would not have numerous witnesses nor evidence to transport from South Carolina.¹⁶⁰ The court also found that the state of modern communication greatly diminished any litigation burden on defendant.¹⁶¹

Clearly, the court's logic is correct as far as it goes, but it leaves many questions unanswered. For instance, what if the defendant was a corporation located in California instead of South Carolina? At what relative geographical proximity does the distance between the defendant and the forum become significant enough to be an unconstitutional "burden" on the defendant? Similarly, the court failed to espouse a useful principle for cases where the defendant and its attorney are required to adjudicate their case in the forum state, both at hearing and at trial, including the full panoply of witnesses and documentary evidence usually associated with CERCLA litigation.

The court's statement that modern communication technology alleviated any burden on the defendant is a truism. It is obviously true that modern technology has lessened the burden on all parties prior to and during trial. Using modern technology: one can simultaneously hold telephonic conferences with numerous people throughout the world; immediately transmit legal documents across the nation via fax or electronic mail; or instantaneously be present at a deposition hundreds of miles away through video teleconferencing. However, the court's reasoning is mere sophistry unless the court is holding that modern technology has effectively replaced the conventional time-honored adjudicatory practice of face-to-face confrontation between defendants and plaintiffs. By its very nature, litigation is burdensome; instead of ignoring this fact, the court should recognize it. Before dismissing the defendant's burdens as insignificant, the court should at least fully discuss those burdens.

¹⁵⁶See Richman, *supra* note 94 at 627. See also *World-Wide Volkswagen*, 444 U.S. at 292.

¹⁵⁷*Chatham*, 858 F. Supp. at 1148.

¹⁵⁸*Id.* at 1149.

¹⁵⁹*Id.*

¹⁶⁰*Id.*

¹⁶¹*Id.*

b. "Forum State's Interest in Adjudicating the Dispute"

The Supreme Court has given considerable attention to a forum state's interest in adjudicating disputes.¹⁶² A common theme in these cases has been the state's interest in providing a forum for its residents to redress grievances against outsiders.¹⁶³ Similarly, the *Chatham* court recognized the patent interest of the state of Florida in adjudicating a dispute involving environmental contamination in Florida.¹⁶⁴ The court recognized that it is Florida's residents that will have to live with the long-term effects of the contamination; it is Florida's property that has been damaged; therefore, it is Florida that has the compelling sovereign interest in adjudicating the case.¹⁶⁵

c. "Plaintiff's Interest in Obtaining Convenient and Effective Relief"

The Court has long held that a plaintiff's interest in a readily available and convenient forum is an important consideration in jurisdictional analysis.¹⁶⁶ Courts generally favor this type of analysis because it gives the plaintiff a forum in which to sue an elusive defendant and allows plaintiff to sue at home.¹⁶⁷ Courts use this to determine the burden upon the plaintiff. The *Chatham* court determined that the plaintiffs would face a significant burden if they had to sue

¹⁶²*Richman*, *supra* note 95 at 629. See also *Burger King*, 471 U.S. at 483 (discussing Florida's legitimate interest in determining claims related to contacts in that state); *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957) (noting that states often have a manifest interest in providing effective means of redress for their residents).

¹⁶³*Id.*

¹⁶⁴*Chatham*, 858 F. Supp. at 1149.

¹⁶⁵*Id.*

¹⁶⁶See *Richman*, *supra* note 143 at 631. See generally, *McGee*, 355 U.S. at 223 (discussing plaintiff's difficulty in pursuing claims outside of the forum as a partial reason for granting jurisdiction); *Shaffer v. Heitner*, 433 U.S. 186 (1977) (stating jurisdiction over an otherwise unamenable defendant might be appropriate when no other forum is available to plaintiff); *Helicopteros Nacionales de Columbia*, 466 U.S. at 412 (finding lack of convenient forum did not militate the granting of jurisdiction); *Asahi*, 480 U.S. at 114 (holding the most convenient forum for a Taiwanese corporation which filed an indemnity claim in California against a Japanese manufacturer was in Japan). See generally, Russell J. Weintraub, *Asahi Sends Personal Jurisdiction Down the Tubes*, 23 TEX. INT'L L.J. 55, 62-63 (1988) (discussing the personal jurisdiction and forum non conveniens in the context of *Asahi*).

¹⁶⁷See generally *Albright*, *supra* note 152, at 385 (stating courts favor broad jurisdictional rules that give plaintiffs the opportunity to sue elusive defendants and sue at home); *Richman*, *supra* note 95, at 631 (stating the Supreme Court has indicated an interest in providing a ready forum for plaintiffs long before it adopted its two-step (contacts plus fairness) test); William L. Reynolds, *The Proper Forum for a Suit: Transnational Forum Non Conveniens and Counter-Suit Injunctions in the Federal Courts*, 70 TENN. L. REV. 1663, 1722 (1992) (stating a broad jurisdictional doctrine helps to ensure that defendants will be held liable somewhere).

non-Florida defendants in their home state.¹⁶⁸ The court found that litigating separate claims in the six different states where the defendants resided would be a prohibitive burden on the plaintiffs.¹⁶⁹ "Without doubt, plaintiffs have a strong interest in obtaining full relief in one forum."¹⁷⁰

d. "The Interstate Judicial System's Interest in Obtaining Convenient and Effective Relief"

Courts are concerned with their ability to exercise jurisdiction over all parties and all issues involved in a dispute.¹⁷¹ The interstate judicial system benefits if all parties and issues are joined in one suit, because repetitious, piece-meal litigation and inconsistent results are alleviated.¹⁷² In *Chatham*, the case not only involved six states, the states sat in four different federal circuits - the Fourth, Fifth, Sixth, and Eleventh.¹⁷³ The court correctly held that if the plaintiffs were forced to pursue each defendant in its home jurisdiction it would result in complex and timely litigation in four different circuits.¹⁷⁴ This would lead to piece-meal decisions and would greatly enhance the chance of inconsistent judgments.¹⁷⁵ Moreover, the court found that multiple pronouncements on liability and damages could greatly complicate actual recovery and the resolution of the contribution claims.¹⁷⁶ Judicial efficiency dictated that the resolution of the claims be determined in one action, in one forum, in Florida.¹⁷⁷

e. "The Shared Interest of the Several States"

The Supreme Court has held that courts should evaluate the shared interest of the several states in furthering substantive social policies prior to the exercise of personal jurisdiction.¹⁷⁸ Yet, the Supreme Court has neither taken the

¹⁶⁸*Chatham*, 858 F. Supp. at 1149.

¹⁶⁹*Id.* (In addition to numerous defendants in Florida, the case involved defendants from Mississippi, Alabama, Georgia, Tennessee, and South Carolina).

¹⁷⁰*Id.*

¹⁷¹See Richman, *supra* note 95, at 633. See also Leslie W. Abramson, *Clarifying "Fair Play and Substantial Justice": How the Courts Apply the Supreme Court Standard for Personal Jurisdiction*, 18 HASTINGS CONST. L.Q. 441, 444-69 (for an expanded analysis detailing the five factors courts utilize in determining "fairness").

¹⁷²*Chatham*, 858 F. Supp. at 1149.

¹⁷³*Id.*

¹⁷⁴*Id.*

¹⁷⁵*Id.*

¹⁷⁶*Id.*

¹⁷⁷*Chatham*, 858 F. Supp. at 1149.

¹⁷⁸*Burger King*, 471 U.S. at 477.

opportunity to explain what this means nor explained why it is even relevant prior to a determination of personal jurisdiction.¹⁷⁹ The *Chatham* court did not shed any light on the subject.

Undaunted by Supreme Court's obfuscatory language, the court merely analyzed the case in light of this factor and miraculously found that exercising jurisdiction over the defendant would further the social policies.¹⁸⁰ The court found that the treatment and disposal of hazardous waste is a national industry involving waste brokers and middlemen shipping hazardous wastes across state lines on a regular basis.¹⁸¹ The court went on to hold (without explanation) that the interposition of jurisdictional defenses would frustrate the remedial goals of CERCLA.¹⁸² Therefore, the shared interest of the states of this nation supported exercising jurisdiction over the defendant.¹⁸³

The *Chatham* court's reasoning in this instance is non sequitur. First, the court failed to explain precisely what it was testing when it evaluated "the shared interest of the several states in furthering the fundamental substantive social policies." Second, the court did not explain why this test is important in establishing jurisdiction. Hence, the *Chatham* court was reduced to post hoc reasoning in order to establish that it was properly complying with the Supreme Court's nebulous standard of interstate gestalt.

It is possible that the Supreme Court is simply asking federal courts to determine which forum among several states has the greatest interest in hearing the case. The language of the *Asahi* case¹⁸⁴ certainly supports this type of analysis. In *Asahi*, the Court held that a California court could not exercise jurisdiction over a Japanese component-part manufacturing company because (inter alia) the interests of Japan ("the several states") in hearing the case outweighed the interests of California.¹⁸⁵ However, this type of test (balancing competing jurisdictional interests) is redundant since the Court has posited two other factors that are directly related to this concern.¹⁸⁶ Reading *Asahi*, it appears that the Supreme Court was attempting to intersperse the concepts of

¹⁷⁹See Richman, *supra* note 95, at 633. See also Jay Conison, *What Does Due Process Have to Do With Jurisdiction*, 46 RUTGERS L.R. 1071, 1189 (1994)(discussing Federalism and sovereignty and the lack of explanation of why these issues are important when exploring the concept of personal jurisdiction).

¹⁸⁰*Chatham*, 858 F. Supp. at 1149.

¹⁸¹*Id.*

¹⁸²*Id.*

¹⁸³*Id.*

¹⁸⁴*Asahi*, 480 U.S. at 1034.

¹⁸⁵*Id.*

¹⁸⁶See *supra* notes 165 and 170 (respectively) (discussing the state's interest in adjudicating the complaint and the judicial system's interest in convenient and effective relief).

interstate sovereignty and federalism into the concept of "fairness" to the defendant (with no explanation of its relevance).¹⁸⁷

Yet, the language of *Worldwide-Wide Volkswagen* and *Kulkov v. Superior Court of California, Etc.* indicate a different rationale for this factor.¹⁸⁸ These cases imply that a court should determine if there is an overriding federal interest, shared by the several states, that is furthered by allowing the suit to proceed at the location.¹⁸⁹ This seems to be the approach that the *Chatham* court used.¹⁹⁰ The court took a perfunctory look at the importance of CERCLA and determined that the criteria had been met. Although CERCLA is important, the court should have explained why CERCLA's relative importance (or the lack thereof) was relevant in determining whether it could exercise personal jurisdiction over the defendant.

IV. CONCLUSION

The Supreme Court's current personal jurisdiction framework has created a quagmire of confusing and inconsistent prerequisites for jurisdiction. The tests the Court utilizes appear to be more like tests for forum non conveniens than tests for jurisdiction.¹⁹¹ By adopting the bifurcated (minimum contacts/fairness) test to determine CERCLA jurisdiction, the *Chatham* court has essentially created a new defense to CERCLA. Defendants who would have never challenged the federal court's jurisdiction will leap at the opportunity to obtain a favorable decision based upon the imprecise contacts/fairness-based standard.

On the one hand, *Chatham* represents a perfunctory application of the *International Shoe* standard; on the other, it heralds a new defense that will certainly become more effective in time. The *Chatham* court strained to find personal jurisdiction in the case. The court's tortured logic was evident in its analysis of both "minimum contacts" and "fairness." However, another court, one not as eager to exercise jurisdiction, may be more reluctant to stretch the logic of *International Shoe* as far.

The *Chatham* court reasoned that the defendant had sufficient contacts with Florida so that the exercise of personal jurisdiction was proper. However, the defendant's contacts with the state of Florida were tangential at best. Certainly, a different court could hold that the contacts were too indirect and too infrequent to allow the exercise of jurisdiction. Moreover, a different court

¹⁸⁷See Conison, *supra* note 179, at 1189-1192.

¹⁸⁸See *World-wide Volkswagen* 444 U.S. at 292-293; *Kulko v. Superior Court Of California, Etc.*, 436 U.S. 84, 93 and 98 (1978). See also Richman, *supra* note 95, at 606 (contending that the Supreme Court relied upon the notion of interstate federalism in deciding *World-Wide Volkswagen v. Woodson*).

¹⁸⁹*Id.*

¹⁹⁰*Chatham*, 858 F. Supp. at 1149.

¹⁹¹See generally Albright, *supra* note 152 (arguing that the fairness doctrine may be seen as an attempt to constitutionalize the doctrine forum non conveniens).

could easily find that the defendant could not reasonably anticipate being haled into a Florida federal court for violations of CERCLA since CERCLA did not exist at the time the alleged violations took place. Additionally, it would be perfectly logical for a court to hold that the defendant could not reasonably anticipate being haled into a federal district court in Florida for improper treatment and/or disposal of hazardous substances since it never treated or disposed of any hazardous substances in Florida. It merely sold its product, scrap batteries.

When analyzing "fairness," the court basically ignored the burden to the defendant. A different court using a different logic could have held that the burden on the defendant in trying a major hazardous waste case in Florida exceeded the other countervailing interests. It does not really stretch the imagination to visualize a CERCLA defendant who could meet the minimum contact criteria and still successfully challenge a federal court's jurisdiction. In *Asahi*, the Supreme Court stated that normally, once minimum contacts have been established, the interest of the plaintiff and the forum will justify the exercise of jurisdiction even if the defendant is seriously burdened.¹⁹² However, the Court, in *Asahi*, balanced the defendant's burden against the interests of the plaintiff and the state and found for the defendant. Although *Asahi* could be distinguished on its facts,¹⁹³ the defendant's contacts with the forum state are no less attenuated in *Chatham*. Using the *Asahi* precedent, a different court could dismiss the *Chatham* case for lack of jurisdiction.

The uncertainties, ambiguities, and inconsistencies associated with the jurisdictional analysis established by the Supreme Court make an already confusing field of law (environmental law) more confusing. The *Chatham* decision is not notable for what the court held, but rather for what it could have held. The same court, analyzing the facts in a slightly different manner, could have held that there were insufficient contacts for the exercise of personal jurisdiction or the exercise of jurisdiction (in this case) would be unfair. *Chatham* can be seen as presaging a new era of environmental defense. Instead of arguing lack of liability in CERCLA cases, defendants will argue lack of fairness or contacts.

If the Supreme Court expects these principles to be applied in a rational, coherent and consistent fashion, the Court must provide at least a modicum of guidance to the courts. The current test is much too fluid for CERCLA cases. It robs both the defendant and the plaintiff of predictability and certainty in a field of law already replete with uncertainty and unpredictability. Without immediate guidance, it is very possible that the nationwide remedial goals of CERCLA will be irreparably damaged and parties will spend more time litigating over the proper forum than actually cleaning contaminated sites.

¹⁹²*Asahi*, 480 U.S. at 1033.

¹⁹³The defendant in the case was a Japanese corporation.