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ENVIRONMENTAL LAW—A CITIZEN SUIT UNDER EPCRA IS NO LONGER A THREAT—*Steel Company v. Citizens for a Better Environment*, 118 S. Ct. 1003 (1998).

I. INTRODUCTION

In *Steel Company v. Citizens for a Better Environment*,¹ the United States Supreme Court considered whether the Emergency Planning and Community Right-to-Know Act² (EPCRA) authorized citizens to sue for wholly past violations.³ The Sixth and Seventh Circuit Courts of Appeal were in disagreement on the question of whether EPCRA's language authorized such citizen suits.⁴ The United States Supreme Court resolved this split by holding that Citizens for a Better Environment lacked standing to maintain a suit for Chicago Steel & Pickling Co.'s past violations.⁵

Part II of this note explores the facts of the *Steel Company* decision. Part III briefly discusses the background of environmental citizen suits, and explains the history and framework of EPCRA. Following an analysis of the Court's reasoning in Part IV, this note considers the significance and future implications of the *Steel Company* ruling in Part V.

II. FACTS

Citizens for a Better Environment (CBE), a non-profit environmental group, brought a private enforcement action against Chicago Steel & Pickling Co. (Steel Co.).⁶ In March 1995, CBE discovered that Steel Co. had failed to comply with the Emergency Planning and Community Right-to-Know Act's (EPCRA) reporting requirements since 1988.⁷ Specifically, Steel Co. failed to file inventory forms and toxic chemical release forms.⁸ CBE uses the reports

1. 118 S. Ct. 1003 (1998).

2. EPCRA, 42 U.S.C. §§ 11022, 11023 (1995).

3. See *Steel Co.*, 118 S. Ct. at 1006.

4. See *id.* at 1009.

5. See *id.* at 1020.

6. See Petitioner's Brief at 3, *Steel Co. v. Citizens for a Better Env't*, 118 S. Ct. 1003 (1997) (No. 221790). Steel Co. has been in business since 1971. See *id.* It is a small minority-owned facility with 55 employees, located on the southeast side of Chicago. See *id.* Steel Co. utilizes "steel pickling," a finishing process that removes scale and rust from steel coils. See *id.* Scale is a "black or gray coating of oxide which forms on steel as it cools[;] [r]ust is a reddish brittle coating formed on steel as it is attacked by moist air." *Id.*

7. See *Steel Co.*, 118 S. Ct. at 1009. EPCRA is an informational statute which provides citizens with information on the presence of extremely hazardous and toxic chemicals in their community. See Petitioner's Brief at 5, *Steel Co.* (No. 221790). The information allows community groups to form emergency response plans in the event of a toxic accident. See EPCRA, 42 U.S.C. §§ 11022, 11023 (1995).

8. See *Steel Co.*, 118 S. Ct. at 1009. EPCRA mandates that Emergency and Hazardous Chemical Inventory Forms and Toxic Chemical Release Forms be filed annually. See EPCRA,

to educate themselves on the hazardous chemicals in the community and to prepare emergency plans in the case of a chemical accident.⁹

Pursuant to EPCRA requirements, CBE gave notice to the steel company sixty days prior to filing their complaint.¹⁰ Steel Co. responded by promptly filing all delinquent inventory and release forms.¹¹ Once Steel Co. satisfied the EPCRA filing requirements, the Environmental Protection Agency (EPA) chose not to pursue an administrative order or civil action against the steel company.¹²

On August 7, 1995, CBE brought suit in the United States District Court for the Northern District of Illinois.¹³ Subsequently, Steel Co. filed motions to dismiss according to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6),¹⁴ alleging that the district court did not have jurisdiction because all overdue reports were filed at the time CBE's complaint was entered.¹⁵ Steel Co.'s motion also alleged that EPCRA did not authorize suits for past violations.¹⁶ The district court held for Steel Co., finding the court was without jurisdiction and that EPCRA could not remedy past violations.¹⁷ The Seventh Circuit

42 U.S.C. § 11022(a)(2). The forms contain information as to the names, properties, and location of chemicals found at a facility, as well as the quantity of the chemical released into the environment. See EPCRA, 42 U.S.C. §§ 11022, 11023 (1995).

9. See *Steel Co.*, 118 S. Ct. at 1017.

10. See *id.* at 1009.

11. See *id.* Steel Co. alleged that they were unaware of EPCRA's reporting requirements. See Petitioner's Brief at 3, *Steel Co.* (No. 221790). In addition, Steel Co. stated that the information mandated by EPCRA was already reported in other forms to agencies. See *id.* "For example, in 1991, . . . Steel [Co.] submitted a Chemical Safety Contingency Plan to the Chicago Fire Department, . . . Police Department and two hospitals detailing the chemicals present at the facility and their chemical properties and locations." *Id.* During the sixty-day notice period, Steel Co. submitted all delinquent forms to the Environmental Protection Agency (EPA), Illinois EPA (IEPA), the Illinois Emergency Management Agency, and the Chicago Fire Department. See *id.* at 8-9.

12. See *Steel Co.*, 118 S. Ct. at 1009. If EPA had elected to pursue an action against Steel Co., CBE would have been barred from filing suit. See EPCRA, 42 U.S.C. § 11046(e) (1995).

13. See Petitioner's Brief at 9, *Steel Co.* (No. 221790). CBE calculated Steel Co.'s past reporting violations to be 21,500. See *id.* Each violation is \$25,000 per day, and CBE "requested penalties of over \$537 million." See *id.* It is interesting to note that the EPA treats violations by a "first-time violator," such as Steel Co., as "one day" violations rather than "per day" violations. See *id.* EPA reserves "per day" penalties for egregious violations. See *id.*

14. See FED. R. CIV. P. 12(b)(1) and 12(b)(6). Rule 12(b)(1) is invoked for lack of subject matter jurisdiction; Rule 12(b)(6) is invoked for failure to state a claim upon which relief can be granted. See *id.*

15. See *Steel Co.*, 118 S. Ct. at 1009. Steel Co. based their allegation on the Sixth Circuit's holding in *Atlantic States Legal Found., Inc. v. United Musical Instruments, Inc.*, 61 F.3d 473 (6th Cir. 1995). See Petitioner's Brief at 9, *Steel Co.* (No. 221790). *Atlantic* held that EPCRA precluded citizen suits for purely past violations. See *Atlantic States Legal Found., Inc. v. United Musical Instruments, Inc.*, 61 F.3d 473 (6th Cir. 1995).

16. See *Steel Co.*, 118 S. Ct. at 1009.

17. See *id.* See Part III.C. *infra*, for reasoning of the district and appellate courts.

Court of Appeals, however, reversed.¹⁸ The United States Supreme Court granted certiorari¹⁹ to cure the split among the circuits as to whether EPCRA allowed citizen suits for past violations.²⁰

III. BACKGROUND

A. History of Environmental Citizen Suits

The 1960's marked the beginning of environmental law as we know it.²¹ During that time, the environment began showing severe signs of pollution, something government regulation and voluntary industry compliance were no longer able to prevent.²² Throughout the next two decades, environmental awareness grew, calling attention to the lack of governmental enforcement of environmental laws.²³ Congress was forced to face the issue of ineffective enforcement, and the first "citizen suit" provision resulted.²⁴

Citizen suits are a critical supplement to governmental enforcement of environmental regulations.²⁵ The first citizen suit provision was incorporated into the 1970 Clean Air Act.²⁶ Through the Clean Air Act, for the first time in environmental law, citizens were given a cause of action to protect public resources.²⁷ Citizen suits enforce environmental regulations when government cannot because of limited resources.²⁸ Congress has included citizen suit

18. *See id.*

19. *See Steel Co. v. Citizens for a Better Env't*, 117 S. Ct. 1079 (1998).

20. *See Steel Co.*, 118 S. Ct. at 1009.

21. *See* Jeffrey A. Keithline, Note, *Emergency Planning and Community Right-to-Know Citizen Suits: Should the Supreme Court Extend Gwaltney?*, 54 WASH. & LEE L. REV. 1227, 1233 (1997).

22. *See* Robert W. Shavelson, *EPCRA, Citizen Suits and the Sixth Circuit's Assault of the Public's Right-to-Know*, 2-Fall ALT. L. ENVTL. OUTLOOK 29 (1995). Due to the use of a pesticide called DDT and other chemical releases, the bald eagle approached extinction, "rivers caught fire, . . . [and] air reeked of industrial stench . . ." *Id.*

23. *See* Keithline, *supra* note 21, at 1234.

24. *See* Keithline, *supra* note 21, at 1234.

25. *See* Michael J. Vahey, Comment, *Hazardous Chemical Reporting Under EPCRA: The Seventh Circuit Eliminates the "Better Late Than Never" Excuse From Citizen Suits*, 29 LOY. U. CHI. L.J. 225, 241-42 (1997).

26. *See* Clean Air Act, 42 U.S.C. § 7604 (1995); *see* Shavelson, *supra* note 22, at 29. The term "citizen suit" was originally coined in a Michigan law drafted by Professor Joseph Sax. *See* Shavelson, *supra* note 22, at 29. Sax developed citizen suits to alleviate the "threat to environmental laws posed by budgetary and political limitations on government enforcement." *See* Vahey, *supra* note 25, at 241.

27. *See* Keithline, *supra* note 21, at 1233. The citizen suit provision was included in the Clean Air Act despite industry's and courts' concerns regarding frivolous suits "overloading the dockets." *See* Keithline, *supra* note 21, at 1235.

28. *See* Shavelson, *supra* note 22, at 29. *See also* Vahey, *supra* note 25, at 241-42.

provisions in nearly every environmental regulation since 1970; each has been modeled after the original Clean Air Act provision.²⁹

B. EPCRA

1. *Enactment of EPCRA*

Congress enacted EPCRA in response to two major chemical accidents.³⁰ The first accident occurred in 1984 in Bhopal, India, at a Union Carbide pesticide plant.³¹ The Bhopal chemical accident killed over 2,000 people, injured over 200,000, and became known as one of the worst tragedies in modern industrial times.³² In 1985, less than a year later, another Union Carbide plant experienced a toxic leak, this time closer to home in Institute, West Virginia.³³ The West Virginia chemical accident took the form of a toxic gas cloud that hovered over the city, causing 200 people to seek medical aid.³⁴ At the time the two Union Carbide accidents occurred, a national program providing citizens with information regarding hazardous chemicals in their communities did not exist, and this left public officials guessing at how to respond to the disasters.³⁵

Congress also reacted to recent studies that showed the Union Carbide accidents were not the first chemical accidents to occur and certainly would not

29. See Keithline, *supra* note 21, at 1238. It is interesting to note the original language used in the Clean Air Act has been modified to fit each environmental regulation. See Keithline, *supra* note 21, at 1238. "Congress has . . . possibly unintentionally [] drafted citizen suit provisions such that" citizens have greater enforcement authority than the EPA. See Keithline, *supra* note 21, at 1238.

30. See Marie Lohmann, Note and Comment, *The Uncertain Future of Citizen Suits under EPCRA: Can Citizens Sue for Past Violations of the Statute's Reporting Requirements?*, 30 LOY. L.A. L. REV. 1709, 1713-14 (1997).

31. See *id.* at 1713.

32. See *id.* at 1713-14. Forty-five tons of methyl isocyanate, a toxic chemical, leaked from a faulty storage tank, causing the accident. See *id.* at 1713. See also Jayne S.A. Pritchard, Comment, *A Closer Look at Title III of SARA: Emergency Planning and Community Right-to-Know Act of 1986*, 6 PACE ENVTL. L. REV. 203, 203-04 (1988).

33. See Lohmann, *supra* note 30, at 1714.

34. See Lohmann, *supra* note 30, at 1714. The accident occurred when a failed valve on a storage tank leaked while under extreme pressure. See Lohmann, *supra* note 30, at 1714. The tank contained 500 pounds of aldicarb oxime, a derivative of the chemical that leaked at the Bhopal plant. See Lohmann, *supra* note 30, at 1714.

35. See Lohmann, *supra* note 30, at 1715. See also Sidney M. Wolf, *Fear and Loathing About the Public Right to Know: The Surprising Success of the Emergency Planning and Community Right-to-Know Act*, 11 J. LAND USE & ENVTL. L. 217, 218 (1996). "[L]ocal authorities were confused about what was happening, what substance was involved, and how to protect citizens." *Id.*

be the last.³⁶ In response to the Bhopal and Institute chemical accidents and information revealed through recent chemical accident studies, Congress enacted the Emergency Planning and Community Right-to-Know Act of 1986.³⁷ Congress introduced EPCRA as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA);³⁸ however, EPCRA is a free-standing law.³⁹

2. *Purpose and Function of EPCRA*

EPCRA is unique because it is the first environmental regulation that is purely informational in contrast to the typical "command and control" regulations enacted by Congress.⁴⁰ As its name indicates, EPCRA serves two primary functions: emergency planning and the public's right to know about the chemicals used and stored in their community.⁴¹ Furnishing citizens with information regarding toxics in their communities allows local community groups to form emergency response plans in the case of a chemical accident.⁴²

The first function, emergency planning and notification, requires local communities to formulate advanced emergency response plans.⁴³ EPCRA does not spell out the specific emergency plan that state or local government should follow; it merely provides a framework for community groups to use in producing a response plan.⁴⁴ The "notification" portion requires that an industrial facility immediately notify the local community group if a hazardous chemical release has occurred.⁴⁵

36. See Lohmann, *supra* note 30, at 1715. "[O]ne 1985 publication claimed that 'in America . . . 60,000 chemicals are produced in over 6,000 communities and last year alone we had 5,700 toxic chemical accidents.'" Lohmann, *supra* note 30, at 1715.

37. See Wolf, *supra* note 35, at 218-19.

38. See SARA, 42 U.S.C. § 9601 (1995).

39. See Eric M. Falkenberry, *The Emergency Planning and Community Right-to-Know Act: A Tool for Toxic Release Reduction in the 90's*, 3 BUFF. ENVTL. L.J. 1, 4 (1995). SARA amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which is also known as "Superfund." See Wolf, *supra* note 35, at 219.

40. See Keithline, *supra* note 21, at 1257. "[U]nlike most environmental statutes[,] [EPCRA] does not specify discharge standards, nor does it impose liability for harming the environment." Keithline, *supra* note 21, at 1257.

41. See Barbara Ann Clay, Note and Comment, *The EPA's Proposed Phase-III Expansion of the Toxic Release (TRI) Reporting Requirements: Everything and the Kitchen Sink*, 15 PACE ENVTL. L. REV. 293, 299 (1997). "Right-to-know" is a term of art used to describe policies "addressing the disclosure of chemical hazard information to populations at risk." See *id.* at 298-99.

42. See *id.* at 299.

43. See Wolf, *supra* note 35, at 220.

44. See Wolf, *supra* note 35, at 220.

45. See Wolf, *supra* note 35, at 220.

The second function, community right-to-know, allows citizens to request and receive information about hazardous and toxic chemicals used at a facility without first going through government channels.⁴⁶ EPCRA's community right-to-know requirement was a matter of great debate due to its expansive industrial disclosure requirements.⁴⁷

EPCRA has been regarded as a potent environmental weapon due to its visible impact on industrial actions.⁴⁸ The first EPCRA reports were released in 1988, noting individual companies and their yearly amounts of chemical releases.⁴⁹ As a result of the EPCRA reports, industries began rethinking their production processes and utilized less hazardous chemicals and methods.⁵⁰ Overall, industries have attempted to reduce toxic chemical releases to sustain a positive community-industry relationship.⁵¹ Although EPCRA has become one of the most significant pieces of environmental legislation, partly due to its right-to-know provision, it remains little-known.⁵²

3. *EPCRA Provisions*

EPCRA contains three subtitles: Subtitle A, "Emergency Planning and Notification;" Subtitle B, "Reporting Requirements;" and Subtitle C, "General Provisions."⁵³

a. Emergency planning and notification

The emergency planning and notification provisions require each state to establish a state emergency response commission (SERC) and a local emergency planning committee (LEPC).⁵⁴ The SERCs, appointed by each state's governor, coordinate emergency response plans and supervise the

46. See Wolf, *supra* note 35, at 220.

47. See Wolf, *supra* note 35, at 220. Congress included the right-to-know portion in EPCRA despite opposition from the industrial sector. See Wolf, *supra* note 35, at 220.

48. See Wolf, *supra* note 35, at 221. The Toxics Release Inventory (TRI) requirement under EPCRA is "among our most potent environmental weapons." See Wolf, *supra* note 35, at 220-21.

49. See Shavelson, *supra* note 22, at 30. Corporate officials, consumers, and stockholders were all surprised when they noted the amounts and types of yearly chemical releases. See Shavelson, *supra* note 22, at 30. Perhaps the greatest influence was that of the consumers and stockholders, who began holding industries responsible "through consumer purchasing decisions and at corporate shareholder meetings." See Shavelson, *supra* note 22, at 30.

50. See Shavelson, *supra* note 22, at 30.

51. See Shavelson, *supra* note 22, at 30.

52. See Wolf, *supra* note 35, at 220. EPCRA is less known than the Clean Air Act and the Clean Water Act. See Wolf, *supra* note 35, at 220.

53. See Wolf, *supra* note 35, at 221-22.

54. See Wolf, *supra* note 35, at 222. See also Lohmann, *supra* note 30, at 1716.

LEPCs' activities.⁵⁵ Each state is divided into local emergency planning districts.⁵⁶ The SERCs appoint an LEPC for each local emergency planning district.⁵⁷

LEPCs are selected from fourteen different groups and organizations in the community; these commissions thus represent a large portion of the population.⁵⁸ SERCs and LEPCs formulate and implement procedures for receiving information from facilities regarding on-site toxic chemicals in order to form the emergency response plans.⁵⁹ In addition, SERCs and LEPCs process public requests for information.⁶⁰ LEPCs design and implement local response plans that include evacuation routes, warning signals, and medical information regarding the specific chemicals used at a facility; the plans also involve coordination of police and fire departments, the media, medical staff, and the public.⁶¹ An elected chairperson heads each LEPC, which submits the response plan to the SERC for approval.⁶²

All facilities subject to EPCRA requirements must contact the pertinent SERC, LEPC, and fire department if the facility possesses any chemical listed as an "Extremely Hazardous Substance" (EHS) and the amount of substance on-site exceeds a "Threshold Planning Quantity" (TPQ).⁶³ An owner or operator of a facility must have a designated representative to work with SERC and LEPC; however, no exemption exists for liability due to a toxic accident even though the facility willingly cooperates with the LEPC.⁶⁴

55. See Wolf, *supra* note 35, at 222.

56. See Wolf, *supra* note 35, at 222.

57. See Wolf, *supra* note 35, at 222.

58. See Falkenberry, *supra* note 39, at 5.

59. See Falkenberry, *supra* note 39, at 5.

60. See Falkenberry, *supra* note 39, at 5.

61. See Falkenberry, *supra* note 39, at 5.

62. See Falkenberry, *supra* note 39, at 5.

63. See Falkenberry, *supra* note 39, at 6. EPCRA defines facility as "buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned and operated by the same person." 42 U.S.C. § 11049(4) (1995). An "Extremely Hazardous Substance" is defined under EPCRA § 302(a)(2). If the EPA does not set a TPQ for a particular substance, the TPQ is set at two pounds per facility until a TPQ is established. See Falkenberry, *supra* note 39, at 6.

64. See Falkenberry, *supra* note 39, at 6. Information to be reported by facilities includes: (1) Chemical name of the substance released; (2) whether the substance is listed as an EHS; (3) estimate of quantity released; (4) time and duration of release; (5) known or anticipated acute or chronic health risks; (6) precautions to be taken due to the release; and (7) name and phone number of persons to contact for further information. See Falkenberry, *supra* note 39, at 7-8.

b. Reporting requirements

Pursuant to EPCRA's reporting requirements, facility owners must submit three documents: Material Safety Data Sheets (MSDS), Emergency and Hazardous Chemical Inventory Forms, and Toxic Chemical Release Forms.⁶⁵ The documents provide information to citizens regarding chemical use, storage, and releases.⁶⁶

Emergency and Hazardous Chemical Inventory Forms exist as Tier I or Tier II; however, only Tier I is mandatory.⁶⁷ A Tier I form requires a facility to summarize the amounts of chemicals and their location at the facility.⁶⁸ Tier II is required only upon request from a SERC, LEPC, or the fire department.⁶⁹ Tier II forms contain Tier I information as well as storage mechanisms of each chemical and whether the owner claims trade secret privileges as to any chemicals.⁷⁰

The third and most controversial type of required reporting is the Toxic Chemical Release Reporting.⁷¹ Each facility must file annual reports documenting releases and transfers of toxic chemicals.⁷² The states collect the reports, and the EPA formulates the information in a computerized database known as the Toxics Release Inventory (TRI) Database.⁷³ The TRI database

65. See Lohmann, *supra* note 30, at 1717. MSDSs are reporting requirements found under the Occupational Safety and Health Act of 1970 (OSHA). See OSHA, 29 U.S.C. § 651 (1998). These data sheets provide employees with information as to chemicals used at a facility. See Wolf, *supra* note 35, at 225.

66. See Wolf, *supra* note 35, at 224-25. Information regarding use and storage of chemicals includes the "types, amounts, location and potential effects" of chemicals used at a facility. See Wolf *supra* note 35, at 224-25. Information regarding chemical releases includes "releases into the air, water[,] or soil." See Wolf, *supra* note 35, at 225.

67. See Wolf, *supra* note 35, at 227.

68. See Wolf, *supra* note 35, at 227. Tier I information allows communities to know "how and where large amounts of potentially dangerous chemicals reside." See Wolf, *supra* note 35, at 227.

69. See Wolf, *supra* note 35, at 227.

70. See Wolf, *supra* note 35, at 227. Trade secret information does not have to be reported; however, a facility may still be required to report the privileged information if it is requested by a health professional in response to emergency planning. See Wolf, *supra* note 35, at 235. In order for a facility to claim trade secret privileges, the following conditions must be met: (1) "the withheld information must not have been disclosed to anybody other than the government or a person bound by a confidentiality agreement;" (2) disclosure is not made under other laws; (3) forcing the facility to disclose the information will affect the facility's competitive position; and (4) the chemical will probably not be discovered through reverse engineering. See Wolf, *supra* note 35, at 235.

71. See Wolf, *supra* note 35, at 229. Toxic Chemical Release Reporting is governed by EPCRA § 313 (codified at 42 U.S.C. § 11023 (1995)).

72. See Wolf, *supra* note 35, at 229.

73. See Wolf, *supra* note 35, at 229-30. "The TRI database is the first chemical-specific, multi-media accounting of toxic releases to the environment ever mandated by federal law."

serves many purposes.⁷⁴ First, the information alerts citizens to the chemical releases and transfers throughout their communities.⁷⁵ In addition, the TRI data supplements research used to develop future environmental regulations and standards.⁷⁶

Information pertaining to Toxic Chemical Release Reports is issued on what is called a Form R; the forms must be submitted by July of each year to cover the preceding year's releases.⁷⁷ Form Rs require large facilities to report annual releases of toxic chemicals into the environment.⁷⁸

c. General provisions

The third subtitle contains general provisions regarding trade secret information and enforcement provisions.⁷⁹ The enforcement provisions give the government and citizens the right to force a facility to abide by EPCRA requirements.⁸⁰ Penalties for failure to comply with EPCRA provisions consist of a \$25,000 fine for each day a violation occurs as well as civil, administrative, and criminal penalties for failure to comply with emergency notification provisions.⁸¹

Due to the expansive number of facilities subject to EPCRA in the United States, EPA does not have the resources to enforce compliance.⁸² The citizen suit provisions in EPCRA were drafted to alleviate this shortcoming.⁸³ Under EPCRA, any person may commence a civil action on his own behalf against an owner or operator of a facility for failure to submit and complete EPCRA required forms.⁸⁴

Wolf, *supra* note 35, at 230.

74. See Wolf, *supra* note 35, at 230.

75. See Wolf, *supra* note 35, at 230.

76. See Wolf, *supra* note 35, at 230.

77. See Wolf, *supra* note 35, at 230-31. A Form R is a standardized form created by the EPA. See Wolf, *supra* note 35, at 230.

78. See Wolf, *supra* note 35, at 230. It is interesting to note that the information reported must be "estimates of releases," not actual measurements. See Wolf, *supra* note 35, at 231. TRI reporting pertains to large facilities. See Wolf, *supra* note 35, at 231. A facility must report if the following conditions are met: (1) the facility "manufactures in Standard Industrial Classifications (SIC Codes) 20-39;" (2) facility consists of ten or more full-time employees; and (3) the facility "manufacture[s], process[es], . . . or use[s] toxic chemicals above yearly threshold amounts." See Wolf, *supra* note 35, at 231.

79. See Lohmann, *supra* note 30, at 1722.

80. See Lohmann, *supra* note 30, at 1722.

81. See Lohmann, *supra* note 30, at 1722.

82. See Jim Scott, Note, *Permissibility of Citizen Suits Under EPCRA for Wholly Past Violations in the Seventh Circuit: Citizens for a Better Environment v. Steel Co.*, 4 WIS. ENVTL. L.J. 215, 219 (1997).

83. See *id.*

84. See EPCRA, 42 U.S.C. § 11046(a)(1). Any person may commence a civil action on

Citizens must give notice to the facility and EPA sixty days prior to filing suit. The notice provisions, along with the phrase "failure to submit and complete," account for the ambiguity that is found to exist in EPCRA.⁸⁵ Two meanings to the ambiguous provisions have surfaced.⁸⁶ First, facilities are liable for past violations; second, facilities may submit delinquent forms, thereby escaping liability.⁸⁷

C. Split Among the Circuits

The Sixth and Seventh Circuits have disagreed upon whether EPCRA authorizes citizen suits for wholly past violations.⁸⁸ The Sixth Circuit, in *Atlantic States Legal Foundation v. United Musical Instruments*,⁸⁹ held that citizens could not sue for past violations. The Seventh Circuit, in *Citizens for a Better Environment v. Steel Co.*,⁹⁰ rejected the Sixth Circuit's holding and

his own behalf against "(A) an owner or operator . . . for failure to . . ." submit follow-up emergency notification; MSDSs; inventory forms; or toxic chemical release forms. *See id.* A follow-up notification report provides information regarding actions taken to respond to a chemical release, including additional health and medical risks and advice. *See* Steven J. Christiansen & Stephen H. Urquhart, *The Emergency Planning and Community Right to Know Act of 1986: Analysis and Update*, 6 BYU J. PUB. L. 235, 241 (1992).

85. *See* EPCRA, 42 U.S.C. § 11046 (a)(1)(A)(iii). *See also* Lohmann, *supra* note 30, at 1722; Scott, *supra* note 82, at 220.

86. *See* Lohmann, *supra* note 30, at 1722.

87. *See* Lohmann, *supra* note 30, at 1722.

88. *See* Scott, *supra* note 82, at 217-18.

89. 61 F.3d 473, 478 (6th Cir. 1995).

90. 90 F.3d 1237 (7th Cir. 1996), *rev'd*, 118 S. Ct. 1003 (1998). Three district courts, prior to the Sixth Circuit's decision in *Atlantic* allowed recovery for past violations: *Atlantic States Legal Foundation v. Whiting*, *Williams v. Leybold Technologies*, and *Delaware Valley Toxics Coalition v. Kurtz-Hastings, Inc.* *See* Scott, *supra* note 82, at 220-21. *See also* Atlantic States Legal Found., Inc. v. Whiting Roll-Up Door Mfg. Corp., 772 F. Supp. 745 (W.D.N.Y. 1991); Williams v. Leybold Techs., 784 F. Supp. 765 (N.D. Cal. 1992); and Delaware Valley Toxics Coalition v. Kurtz-Hastings, Inc., 813 F. Supp. 1132 (E.D. Pa. 1993). In *Whiting*, the Atlantic States Legal Foundation alleged that Whiting failed to submit MSDSs, inventory forms, and release forms; however, by the time suit was filed, Whiting had submitted two of the three delinquent forms. *See Whiting*, 772 F. Supp. at 746. Whiting claimed its compliance barred Atlantic States Legal Foundation's suit. *See id.* The court held that "this Court's acceptance of the defendant's interpretation would render gratuitous the compliance dates for initial submissions which Congress placed in EPCRA's reporting provisions." *Id.* at 750. *See also* Scott, *supra* note 82, at 221 (quoting *Whiting*, 772 F. Supp. at 750). In *Williams*, Leybold failed to file an MSDS for nickel. *See Williams*, 784 F. Supp. at 766. At the time, threshold requirements for nickel had not been set. *See id.* at 767-68. EPA later established the threshold requirements; the amount of nickel at Leybold was well below reporting requirements. *See id.* at 768. The plaintiff filed suit after EPA established the threshold requirements. *See id.* The court held Leybold was in compliance at the time suit was filed; however, the court also found that EPCRA permitted suits for past violations. *See id.* at 770. In *Kurtz-Hastings*, the coalition alleged that Kurtz-Hastings failed to file release forms; after notice of intent to sue, Kurtz-Hastings filed the delinquent forms. *See Kurtz-Hastings*, 813 F. Supp. at 1136. The court

chose to follow all other courts prior to *Atlantic* in holding citizens could sue for past violations. Both the Sixth and Seventh Circuits claimed to base their decision on the Supreme Court's holding in *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*⁹¹

1. *The Gwaltney Decision*

In *Gwaltney*, the issue was whether §505(a) of the Clean Water Act (CWA) authorized citizen suits for past violations.⁹² The CWA makes it unlawful for a facility to discharge any pollutant into navigable waters except as authorized by the CWA.⁹³ The Clean Water Act also provides citizens with the right to sue any person alleged to be in violation of the Act.⁹⁴

Gwaltney, a meat-packing plant, obtained a National Pollution Discharge Elimination System (NPDES) permit which authorized *Gwaltney* to release seven pollutants into the Pagan River in Smithfield, Virginia.⁹⁵ *Gwaltney* failed to comply with the NPDES permit and exceeded effluent limitations on five of the seven pollutants.⁹⁶

Two environmental groups, Chesapeake Bay Foundation and National Resource Defense Council, sent *Gwaltney* a notice of intent to sue in 1984, alleging that *Gwaltney* had violated and would continue to violate its NPDES permit.⁹⁷ *Gwaltney* brought a motion to dismiss, claiming that the CWA only authorized citizen suits where a defendant was violating the Act at the time suit was filed; *Gwaltney* was in compliance when the environmental groups filed suit.⁹⁸

The district court ruled for the environmental groups, holding that the CWA allowed citizens to sue for past violations.⁹⁹ The Fourth Circuit Court

found for the coalition, holding that allowing Kurtz-Hastings to cure the violation by filing late would make citizen suit provisions ineffective. *See id.* at 1141-42.

91. 484 U.S. 49 (1987). *See* Keithline, *supra* note 21, at 1231.

92. *See Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 52 (1987).

93. *See* 33 U.S.C. § 1311(a); *see also Gwaltney*, 484 U.S. at 52.

94. *See Gwaltney*, 484 U.S. at 53.

95. *See id.*

96. *See id.* "Between . . . 1981 . . . and . . . 1984, [*Gwaltney*] violated its [total Kjeldahl nitrogen] limitation 87 times, its chlorine limitations 34 times, and its fecal coliform limitations 31 times." *Id.*

97. *See id.* at 54.

98. *See id.* at 54-55.

99. *See id.* at 55.

of Appeals affirmed.¹⁰⁰ Both courts based their decisions on the Clean Water Act's legislative history and purpose.¹⁰¹

On certiorari, the United States Supreme Court first looked to the statute's language.¹⁰² Although the Court found the language to be ambiguous, it concluded that its most natural reading required citizens to allege a continuous or intermittent violation.¹⁰³ Next, the Court made note of the present tense utilized in the CWA.¹⁰⁴ Finally, the Court looked to the purpose of the notice of intent to sue requirement.¹⁰⁵ The Court found the purpose of the notice requirement was to give facilities an opportunity to be in compliance, dispelling the need for a citizen suit.¹⁰⁶ In addition, the Court stated that allowing suits for past violations would make the notice requirement to alleged violators merely gratuitous.¹⁰⁷

2. *The Sixth Circuit Decision*

In *Atlantic States Legal Found. v. United Musical Instruments*,¹⁰⁸ Atlantic States Legal Foundation (ASLF), an environmental organization, alleged that United Musical Instruments (UMI) violated EPCRA reporting requirements. UMI, a manufacturer of musical instruments in Eastlake, Ohio, failed to file form Rs regarding the storage and usage of toxic chemicals at its facility.¹⁰⁹ ASLF notified UMI of its intent to sue and, UMI then submitted the required form Rs.¹¹⁰ UMI filed a motion to dismiss, arguing that EPCRA did not allow citizen suits for past violations.¹¹¹

The Sixth Circuit agreed with UMI and affirmed the district court's dismissal.¹¹² As in *Gwaltney*, the court first looked to the plain language of EPCRA.¹¹³ The court explained that although form Rs are required to be submitted by a certain date, the basis of a citizen suit is the failure to complete

100. See *Gwaltney*, 484 U.S. at 56.

101. See *id.*

102. See *id.*

103. See *id.* at 57. The Court pointed out that Congress could have phrased the language as "to have violated" rather than "to be in violation" if they intended to include past violations. See *id.*

104. See *id.* at 59. The act uses the present tense in the phrase "to be in violation." See Clean Water Act, 42 U.S.C. § 7604 (a)(1)(ii) (1995).

105. See *Gwaltney*, 484 U.S. at 59.

106. See *id.* at 60.

107. See *id.*

108. 61 F.3d 473, 474 (6th Cir. 1995).

109. See *id.*

110. See *id.* See *supra* note 77 for the definition of a Form R.

111. See *Atlantic*, 61 F.3d at 474.

112. See *id.* at 475.

113. See *id.*

and submit a required form.¹¹⁴ The court further stated that a form is completed and filed even though it may be untimely.¹¹⁵

Next, comparing EPCRA to the Clean Water Act, the court followed *Gwaltney's* reasoning regarding the notice requirement.¹¹⁶ The court pointed to likenesses between EPCRA and the Clean Water Act such as the sixty-day notice requirement and the prohibition of a citizen suit once EPA enforcement actions have begun.¹¹⁷ Following *Gwaltney*, the court recognized that the sixty-day notice period allows a facility to cure a violation and government agencies to take appropriate action, both of which dispel the need for a citizen suit.¹¹⁸ The most natural reading of EPCRA, the court concluded, did not authorize citizen suits for past violations.¹¹⁹

ASLF argued that, after *Gwaltney*, Congress amended the Clean Air Act to allow citizen suits for past violations; however, the sixty-day notice requirement was unchanged.¹²⁰ ASLF claimed that Congress's position on the sixty-day notice period was not in agreement with *Gwaltney's* reasoning.¹²¹ The court rejected this argument, holding that Congress would have amended EPCRA as well as the Clean Water Act had Congress intended to allow EPCRA citizen suit provisions to maintain suits for past violations.¹²²

3. *The Seventh Circuit Decision*

The Seventh Circuit Court of Appeals faced the issue of whether EPCRA authorized citizen suits for past violations.¹²³ CBE brought suit against Steel Co. for failing to file a single inventory or toxic release form.¹²⁴ Upon receiving CBE's notice of intent to sue, Steel Co. filed all overdue forms, bringing themselves into compliance.¹²⁵

The district court followed the Sixth Circuit's lead in *Gwaltney* and dismissed CBE's suit.¹²⁶ The district court explained that the forms were no longer overdue and that this caused the violation to be in the past. The court

114. *See id.*

115. *See id.*

116. *See id.* at 476.

117. *See Atlantic*, 61 F.3d at 476.

118. *See id.*

119. *See id.* at 477. "Congress could have phrased its requirements in language that looked to the past . . . , but it did not choose this . . . option." *Id.* (quoting *Gwaltney*, 484 U.S. at 57).

120. *See id.*

121. *See id.*

122. *See id.*

123. *See Citizens for a Better Env't v. Steel Co.*, 90 F.3d 1237, 1242 (7th Cir. 1996).

124. *See id.* at 1241.

125. *See id.* *See* Part II. *supra*, for a detailed summary of the facts.

126. *See Citizens*, 90 F.3d at 1242.

then stated that past violations were not a cause of action that EPCRA authorized under the citizen suit provisions.¹²⁷

On appeal, the Seventh Circuit criticized the Sixth Circuit for applying a literal interpretation of the *Gwaltney* holding to EPCRA.¹²⁸ The Seventh Circuit did not apply the *Gwaltney* holding; however, the court did choose to use *Gwaltney*'s interpretive methodology.¹²⁹

As did the *Gwaltney* court, the Seventh Circuit first turned to EPCRA's plain meaning.¹³⁰ The court distinguished EPCRA's language from the Clean Water Act's language by noting the verb-tense of each act.¹³¹ The court explained that the Clean Water Act is worded in the present tense, whereas EPCRA is worded in a more neutral language.¹³² The court concluded that Congress could have included language limiting citizen suits to only present violations.¹³³

The Seventh Circuit next addressed the sixty-day notice requirement.¹³⁴ The court held that permitting a cause of action for past violations did not render the notice requirement merely gratuitous.¹³⁵ The court reasoned that the purpose of the notice provision is to mitigate damages because each day a violation occurs there is an additional fine.¹³⁶ In addition, the notice allows EPA the option of addressing a facility's violations before any other group or organization.¹³⁷

IV. REASONING OF THE COURT

The United States Supreme Court granted certiorari to resolve the split between the Sixth and Seventh Circuits as to whether EPCRA authorizes citizens to sue for past violations.¹³⁸ The United States Supreme Court faced two possible jurisdictional issues and the dilemma as to which should be decided first.¹³⁹ The first issue was whether CBE had constitutional standing;

127. *See id.*

128. *See id.*

129. *See id.*

130. *See id.* at 1242-44.

131. *See id.*

132. *See Citizens*, 90 F.3d at 1244. According to the court, EPCRA's language could indicate a future or past violation. *See id.*

133. *See id.*

134. *See id.*

135. *See id.*

136. *See id.*

137. *See Citizens*, 90 F.3d at 1244.

138. *See Steel Co.*, 118 S. Ct. at 1009.

139. *See id.*

without constitutional standing, the Court would not have proper jurisdiction.¹⁴⁰ The second issue was whether CBE had statutory standing; in other words, the Court needed to determine whether § 11046(a) of EPCRA permitted CBE's cause of action.¹⁴¹

The Court stated that it is well settled that the absence of a cause of action does not implicate subject matter jurisdiction.¹⁴² The Court has jurisdiction if a petitioner will have the right to recover under one construction of the Constitution and laws of the United States but will be defeated under another construction.¹⁴³ The Court further noted that a court may properly dismiss a suit for lack of subject matter jurisdiction if the claim is insubstantial and devoid of merit.¹⁴⁴ In the present case, CBE would win under one construction of EPCRA but would lose under another construction.¹⁴⁵

Justice Stevens noted in his concurrence that the Court had previously decided statutory standing questions before constitutional standing questions.¹⁴⁶ The majority opinion, however, stated that Stevens's concurrence was not presenting a statutory question of standing; the Court explained that Stevens's approach would amount to a premature determination of the merits.¹⁴⁷ Scalia further stated that Stevens was unable to point to a case in which the Court labeled a cause of action as jurisdictional and decided that question before the question of Article III standing.¹⁴⁸

140. *See id.*

141. *See id.* The Court stated that the standing issue is normally considered a threshold question and would be decided first; however, due to Justice Stevens's claim that the second issue (whether EPCRA authorizes suits for past violations) was also a jurisdictional issue, the Court saw a need for a discussion of jurisdictional issues. *See id.*

142. *See id.* at 1010.

143. *See id.* "[T]he District Court has jurisdiction if 'the right of petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another[.]'" *Id.* (quoting *Bell v. Hood*, 327 U.S. 678, 685 (1946)).

144. *See Steel Co.*, 118 S. Ct. at 1010. Dismissal for lack of subject matter jurisdiction is proper when the claim is "insubstantial, implausible, foreclosed by prior decisions of the Court, or otherwise completely devoid of merit . . ." *Id.* (quoting *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661 (1974)).

145. *See id.* Scalia noted that Stevens did not argue that CBE's claim was immaterial. *See id.* Instead, Stevens relied on another Supreme Court case, *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, which treated a "similar issue as jurisdictional." *See id.* *See also Gwaltney*, 484 U.S. at 49. In reference to *Gwaltney*, however, Scalia noted that the "jurisdictional character of the elements of the cause of action in *Gwaltney* made no substantive difference . . . , had been assumed by the parties, and was assumed without discussion by the Court." *Steel Co.*, 118 S. Ct. at 1011. The Court stated that *Gwaltney* is considered a "drive-by" jurisdictional ruling and has no precedential effect. *See id.*

146. *See Steel Co.*, 118 S. Ct. at 1011 (Stevens, J., concurring).

147. *See id.* Stevens asked the Court to first answer the question whether the scope of EPCRA included a right of action for past violations. *See id.*

148. *See id.* Scalia noted that the consequences of deciding a merit question before a

The Court declared that it would refuse to decide any cause of action, even though labeled jurisdictional, before deciding whether the case meets Article III jurisdictional requirements.¹⁴⁹ The Court stated that the jurisdiction of the present court—as well as the jurisdiction of the court from which the case comes—should always be decided first.¹⁵⁰ The Court explained that a court cannot decide questions of law when there is doubt as to that court's jurisdiction.¹⁵¹ To do so is called "hypothetical jurisdiction," which is much like issuing an advisory opinion.¹⁵² The Court held that the issue of whether CBE had standing should be decided first.¹⁵³

The Court reiterated that Article III standing consists of three requirements: injury in fact, causation, and redressability.¹⁵⁴ CBE alleged that Steel Co.'s failure to file toxic chemical inventory and release forms was an injury in fact to them.¹⁵⁵ The Court did not decide the merits of that allegation; it instead held that CBE's claim was not redressable.¹⁵⁶

In considering the redressability question, the Court looked to CBE's Complaint.¹⁵⁷ The complaint asked for: (1) a declaratory judgment that Steel Company violated EPCRA; (2) authorization for CBE to inspect the steel company; (3) an order requiring the Steel Company to provide copies of all compliance reports; (4) payment of a civil penalty; (5) costs and attorneys fees; and (6) any other appropriate relief.¹⁵⁸

The Court easily disposed of the first item.¹⁵⁹ The Court stated that a declaratory judgment would be worthless because there was no controversy as

standing question are great; "[i]t would turn every statutory question in an EPCRA citizen suit into a question of jurisdiction." *Id.*

149. *See id.* at 1011.

150. *See Steel Co.*, 118 S. Ct. at 1012.

151. *See id.* at 1016.

152. *See id.* An advisory opinion has been "disapproved by this Court from the beginning." *Id.* (quoting *Muskrat v. United States*, 219 U.S. 346, 362 (1911)). Stevens, in his concurrence, endorsed the use of "hypothetical jurisdiction," which is an approach used by courts of appeal. *See id.* at 1012. Several Courts of Appeal "find it proper to proceed immediately to the merits question, despite jurisdictional objections . . . where the merits question is more readily resolved . . . and the prevailing party on the merits would be the same as the prevailing party were jurisdiction denied." *Id.* The majority declined to endorse this approach. *See id.*

153. *See id.* at 1016.

154. *See id.* at 1016-17. An injury in fact is a concrete harm suffered by a plaintiff. *See id.* at 1016. Causation is a traceable connection between the injury in fact and the defendant's conduct. *See id.* at 1017. Redressability is whether the relief requested by the plaintiff will address plaintiff's injury. *See id.*

155. *See id.* at 1018.

156. *See Steel Co.*, 118 S. Ct. at 1018.

157. *See id.*

158. *See id.*

159. *See id.*

to whether Steel Co. was in violation of EPCRA filing requirements.¹⁶⁰ The fourth item, payment of a civil penalty, was not redressable because the penalty was payable to the United States Treasury.¹⁶¹ The Court explained that payment to the Treasury was not remedial but rather vindictive in that merely satisfying CBE with a favorable judgment would not remedy an injury.¹⁶² As to item five, costs of litigation, the Court found that CBE could not invent standing by bringing suit.¹⁶³ Litigation must redress CBE's injury in some way other than for the cost of the litigation itself.¹⁶⁴

The Court noted that the remaining items in CBE's complaint, items two and three, served to discourage future violations of EPCRA.¹⁶⁵ Although the Court acknowledged that deterring future violations can be remedial, it went on to find that a threatened violation was not one of CBE's allegations.¹⁶⁶ According to the Court, neither authorizing CBE to inspect Steel Co.'s facility nor requiring Steel Co. to turn over compliance reports to CBE could redress a past wrong.¹⁶⁷ Due to the fact that only past violations were alleged, the complaint was not redressable.¹⁶⁸

The United States Supreme Court, finding the complaint lacked redressability, held that CBE lacked standing to sue.¹⁶⁹ The Court held that it did not have jurisdiction over this matter and neither do the lower courts.¹⁷⁰

V. SIGNIFICANCE

As a result of the United States Supreme Court's ruling in *Steel Co.*, EPCRA violators are now free to withhold compliance until they receive a notice of intent to sue.¹⁷¹ Once noticed, violators can choose to submit all overdue forms, making each violation a past violation and thus rendering citizen suits barred.

In effect, the Supreme Court's ruling undermines the purpose of a citizen suit.¹⁷² In the past, citizen suits have made facilities think twice about violating

160. *See id.*

161. *See id.*

162. *See Steel Co.*, 118 S. Ct. at 1018-19.

163. *See id.* at 1019. "[P]laintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit." *Id.*

164. *See id.*

165. *See id.*

166. *See id.*

167. *See id.*

168. *See Steel Co.*, 118 S. Ct. at 1020.

169. *See id.*

170. *See id.*

171. *See Shavelson, supra* note 22, at 37.

172. *See Keithline, supra* note 21, at 1261.

environmental regulations because courts often assess steep penalties.¹⁷³ Allowing a facility to bring themselves into compliance after receiving notice lessens a citizen suit's effectiveness and leaves little incentive for a facility to comply.¹⁷⁴

In addition, citizens and environmental groups will no longer have an incentive to spend time and money for research and discovery.¹⁷⁵ The only time an EPCRA citizen suit can proceed to trial is when a facility fails to cure all delinquent reporting requirements within the sixty-day notice period.¹⁷⁶ Barring citizen suits for past violations prevents citizens from receiving reimbursement for pre-trial expenses; this is a chance many private citizens and non-profit organizations cannot afford to take.

The Supreme Court's ruling may also undermine EPCRA's goals.¹⁷⁷ For the emergency response plans to work effectively, facilities must submit timely reports.¹⁷⁸ The release and inventory reports containing amounts, types, and locations of chemicals, form the basis for the response plans. Furthermore, allowing facilities to file untimely reports neutralizes EPCRA's community right-to-know provisions.¹⁷⁹ Logic dictates that, without the user's submission of informational reports, citizens cannot know of the chemicals in their locality.

Although the Supreme Court's decision in *Steel Co.* will stifle the vigor in which citizen suits for EPCRA violations are pursued, it may not be a loophole readily jumped through by industrial facilities.¹⁸⁰ Much of the information industries are required to report pursuant to EPCRA is already available to the public through other reporting requirements; therefore, industries do not receive any benefit from not complying with EPCRA.¹⁸¹ Additionally, the fear of critical public exposure is a force which continues to compel industries to comply with environmental regulations.¹⁸²

173. See Keithline, *supra* note 21, at 1263. Court-assessed penalties are generally much higher than a settlement between EPA and the facility. See Keithline, *supra* note 21, at 1263.

174. See Shavelson, *supra* note 22, at 37.

175. See Shavelson, *supra* note 22, at 39.

176. See Katarina K. Boer, Comment, *United Musical Instruments v. The Steel Company: The Conflict Over the Safety of Our Communities and the Emergency Planning and Community Right-to-Know Act*, 91 NW. U. L. REV. 1599, 1630-40 (1997).

177. See Shavelson, *supra* note 22, at 38-39.

178. See Shavelson, *supra* note 22, at 38-39.

179. See Shavelson, *supra* note 22, at 38-39.

180. Interview with Randy Thurman, Director of the Arkansas Env'tl. Federation, in Little Rock, Ark. (Aug. 5, 1998).

181. See *id.*; see also Letter from Randy Thurman, Director, Arkansas Env'tl. Federation, to OPPT Docket Clerk, EPA (Dec. 19, 1996) (on file with the Arkansas Env'tl. Fed.). Facilities must report much of the same information required under EPCRA in order to receive permits pursuant to the Clean Air Act and the Clean Water Act. See Interview with Randy Thurman, *supra* note 180.

182. See Interview with Randy Thurman, *supra* note 180. Mr. Thurman explained that the

The Supreme Court's holding does not encourage citizens to utilize their rights promulgated under EPCRA; however, the holding also does not influence industries to stop complying with EPCRA. Whether the *Steel Co.* ruling frustrates Congress's goal in enacting EPCRA—to protect citizens through making each community aware of the chemicals in their locality—remains to be seen.

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fear of bad public exposure is a force strong enough to make industries comply. Mr. Thurman revealed that there are other means in which the public can discover who are the "bad" companies; for example, the Environmental Defense Fund has a web site which lists the "worst players [industrial facilities] in every community." See Interview with Randy Thurman, *supra* note 180.

