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Emily Melvin Mooring
University of Kentucky

Ruth Lerner
University of Kentucky

CORPORATE PARENT LIABILITY UNDER CERCLA IN *UNITED STATES V. BESTFOODS*: TAKING US BACK TO THE BASICS

EMILY MELVIN MOORING & RUTH LERNER*

I. INTRODUCTION

Since 1980, when Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA),[1] courts have been faced with the problem of determining who should bear the liability for cleanup costs at chemical plants.[2] The 1997 decision by the Sixth Circuit in *United States v. Cordova Chemical Co. of Michigan*[3] sent ripples of concern through the environmental law community. By holding that "no liability attaches unless the corporate veil can be pierced," the Sixth Circuit ruled that a parent corporation cannot be held directly liable under CERCLA.[4]

With this decision, the Sixth Circuit contravened both the weight of authority on the subject and what many of the circuits felt to be the intent of Congress to penalize all parties with direct responsibility for pollution.[5] A recent article in the *Journal of Land, Resources, and Environmental Law* called the case "a beacon of hope for parent corporations hoping to dodge financial liability for polluted sites owned by their subsidiaries;" few courts had held in favor of the parent corporation prior to *Cordova Chemical.*[6] An extensively

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*Senior Staff Members, Journal of Natural Resources & Environmental Law; J.D., 2000 University of Kentucky.

[1]Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675 (1996).

[2]*See generally* Joslyn Mfg. v. T.L. James & Co., 893 F.2d 80 (5th Cir. 1990); New York v. Shore Realty Corp., 759 F.2d 1032 (2d Cir. 1985); CPC Int'l., Inc. v. Aerojet-General Corp., 777 F. Supp. 549 (W.D. Mich. 1991); Idaho v. Bunker Hill Co., 635 F. Supp. 665 (D. Idaho 1986).

[3]113 F.3d 572 (6th Cir. 1997).

[4]*Id.* at 583.

[5]Matthew Leveridge, Note, *CERCLA Liability for Parent Corporations After* United States v. Cordova Chemical Company of Michigan*: Who Pays for Past Wrongs?*, 13 J. NAT. RESOURCES & ENVTL. L. 199, 215 (1997-98).

[6]Jennifer Rigby, Note, United States v. Cordova Chemical Company of Michigan*: Redefining the Parameters of Corporate Liability Under CERCLA*, 18 J. LAND RESOURCES & ENVTL. L. 235 (1998).

annotated article in the *Villanova Law Review* expressed concern that the precedent set in *Cordova Chemical Co.* would persuade corporations within the Sixth Circuit to incorporate subsidiaries that deal with hazardous materials so as to avoid the possibility of parental liability.[7]

This comment focuses on the Supreme Court's ruling in *United States v. Bestfoods*[8] and how the Court answers the derivative versus direct liability split in the circuits. The Court accomplishes this by reviewing a few basic concepts involved in holding a corporate entity liable under CERCLA. Part II reviews the case history leading up to the Supreme Court ruling. Part III examines the issues involved in the legal background of the case. Part IV focuses on the Supreme Court's opinion and the reasoning behind that opinion. Lastly, Part V contains the authors' conclusions drawn from an analysis of the decision.

II. CASE HISTORY

The litigation in *United States v. Cordova Chemical Co. of Michigan*[9] centered around a contaminated site in Dalton Township, Michigan, which was used from 1959 to 1986 as a chemical manufacturing facility.[10] From 1957 to 1965, Ott Chemical Company ("Ott I") owned and operated the site.[11] Ott I was purchased by CPC International ("CPC") in 1965 through a wholly owned subsidiary that later changed its name to Ott Chemical Company ("Ott II").[12] Ott II operated the site from 1965 to 1972 under the direction and control of CPC.[13] Ott II sold the site to Story Chemical Company in 1972.[14] Story operated the site until 1977 when the company declared bankruptcy.[15]

In 1977, the Michigan Department of Natural Resources

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[7] *See* Amy C. Stovall, Comment, *Limiting operator Liability For Parent Corporations Under CERCLA*: United States v. Cordova Chemical Co., 43 VILL. L. REV. 219 (1998).

[8] 118 S. Ct. 621 (1997).

[9] 113 F.3d 572 (6th Cir. 1997).

[10] *See* CPC Int'l., Inc. v. Aerojet-General Corp., 777 F. Supp. 549, 555 (W.D. Mich. 1991).

[11] *See id.*

[12] *See id.* at 558-62.

[13] *See id.* at 558-59.

[14] *See id.* at 555.

[15] *See id.*

("MDNR") began investigating the amount of environmental damage at the site.[16] Once the MDNR determined that environmental damage existed at the site, it began looking for a purchaser who would be willing to participate in the cleanup of the site.[17] In October of 1977, Cordova Chemical Company ("Cordova/California"), a subsidiary of Aerojet-General Corporation ("Aerojet"), purchased the site from Story.[18] Cordova/California signed a "stipulation and consent order" agreeing to pay for some cleanup at the site in exchange for a release from liability for future cleanup costs.[19] Cordova/California subsequently created a wholly owned subsidiary, Cordova Chemical Company of Michigan ("Cordova/Michigan"), and transferred ownership to the subsidiary before any chemical manufacturing ever began at the site.[20]

The contamination started in the groundwater that flows underneath the site.[21] Much of this contamination resulted during the Ott I and Ott II eras from the use of unlined lagoons; the burial and slitting of drums; spills of chemicals from train cars onto train tracks; overflows of chemical waste at a cement-lined equalization basin; and the dumping of hazardous chemicals into the woods.[22] A suit was soon brought to determine liablity under CERCLA for the cleanup costs associated with the site's ongoing contamination.[23]

In *CPC International Inc. v. Aerojet-General Co.*, the United States District Court for the Western District of Michigan recognized that parent corporations could either be directly liable for operating the site or liable through common law veil piercing.[24] The court held CPC directly liable as an operator of the site because it "actively participated in and exerted significant control over Ott II's business and decision-

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[16] *See id.* at 562.
[17] *See id.* at 563.
[18] *See id.* at 555.
[19] *See id.* at 566.
[20] *See id.* at 568.
[21] *See id.* at 555.
[22] *See id.* at 556.
[23] *See id.* at 556.
[24] *See id.* at 572.

making."[25] The question of whether or not CPC could also be held liable through veil piercing was not reached.[26] Common law veil piercing, an equitable doctrine, disregards separate corporate existence in circumstances where a corporation has used the separateness to commit fraud.[27]

On appeal by Cordova/Michigan in *United States v. Cordova Chem. Co.*, a panel for the United States Court of Appeals for the Sixth Circuit affirmed in part, reversed in part, and remanded.[28] The court of appeals held that a parent corporation could not be held directly liable for its subsidiary's facility by actively participating in the subsidiary's affairs. Liability only attached to the parent corporation if the corporate veil could be pierced.[29] Moreover, the court determined that CPC's corporate veil could not be pierced because it had not utilized the corporate form to perpetrate a "fraud or wrong."[30] Soon after the panel's opinion, the entire Sixth Circuit voted to hear the case *en banc,* vacating the previous decision.[31] The *en banc* opinion, in *United States v. Cordova Chem. Co.*,[32] held that a parent corporation could only be held liable under CERCLA as an owner if the corporate veil could be pierced, or as an operator if the parent operated the facility independently or jointly with the subsidiary.[33] The court further found that CPC and Aerojet were not liable as owners or operators because their corporate veils could not be pierced.[34]

The Supreme Court of the United States granted *certiorari* in 1997 to answer the question of when, and under what circumstances, a

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[25] *Id.* at 574. The district court also found Aerojet and its subsidiaries liable. The court held Cordova/Michigan liable as an operator of the site; as to Aerojet, the court pierced its veil to make it liable. *See* United States v. Cordova Chem. Co., 59 F.3d 584 (6th Cir. 1995), *vacated en banc,* 67 F.3d 586 (6th Cir. 1995).

[26] *See id.* at 573.

[27] *See id.* at 574.

[28] *See* United States v. Cordova Chem. Co., 59 F.3d 584 (6th Cir. 1995), *vacated en banc*, 67 F.3d 586 (6th Cir. 1995).

[29] *See id.* at 590.

[30] *Id.* at 591.

[31] *See* United States v. Cordova Chem. Co., 67 F.3d 586 (6th Cir. 1995).

[32] 113 F.3d 572 (6th Cir. 1997). Interestingly, the *en banc* decision was written by Judge Norris, who wrote for the panel in the first case. As such, the *en banc* opinion codifies to a large extent the Sixth Circuit's previous holding. *See id.*at 572.

[33] *See* United States v. Cordova Chem. Co., 113 F.3d 572, 580 (6th Cir. 1997).

[34] *See id.* at 581-83.

parent corporation can be held liable under CERCLA.[35] Although the Court agreed with the Sixth Circuit's rejection of the district court's analysis of operator liability under CERCLA, it also ruled that the Sixth Circuit's analysis was too narrow.[36] The Supreme Court held that a parent corporation can be liable in two ways: directly liable as an operator that "actively participated in, and exercised control over, its subsidiary's facility," or through piercing the corporate veil.[37] The Court then remanded to the district court for a determination of whether or not CPC actually controlled or participated in the acts of the facility.[38]

III. ISSUES AND LEGAL BACKGROUND

The Comprehensive Environmental Response Compensation & Liability Act was enacted in 1980 in response to the growing concern over the dangers of hazardous wastes on human health and the environment.[39] The Act empowers the federal government to clean up hazardous waste sites and identify those responsible for the pollution.[40] Through CERCLA, Congress holds those responsible for environmental harm liable for the clean up of the polluted sites.[41]

CERCLA defines a responsible party as any one of four categories of "covered persons."[42] The issue in *Bestfoods* focuses on the interpretation and application of the second category, namely "owners or operators." The pertinent part of § 9607(a) reads "any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed."[43] CERCLA defines "operator" as "any person owning or operating such facility."[44] Though this definition has been called

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[35] *See* United States v. CPC Int'l, Inc. 1024 (1997).
[36] *Bestfoods*, 118 S. Ct. at 1887.
[37] *Id.* at 1881.
[38] *Id.* at 1890.
[39] 42 U.S.C. §§ 9601-9675 (1996).
[40] 42 U.S.C. § 9604(a) (1996).
[41] H.R. REP. NO. 96-1016, at 2 (1980), *reprinted in* 1980 U.S.C.C.A.N. 6119, 6120.
[42] 42 U.S.C. § 9607(a)(1-4).
[43] 42 U.S.C. § 9607(a)(2).
[44] 42 U.S.C. §9601(20)(A)(ii).

circular,[45] the term "person" is defined more broadly and encompasses virtually any possible polluting entity, including a corporation.[46]

Separation of the term "owner" from "operator" has been held to indicate that an operator is not protected by his legal position as an owner if he can, in fact, be found to have acted as an operator of the facility.[47] In considering the appropriate standard, the Second Circuit, in *Schiavone v. Pearce,*[48] stated "an interpretation of CERCLA that imposes operator liability directly . . . is consistent with the general thrust and purpose of the legislation."[49] A similar interpretation was derived from the definition of the term "person." The Third Circuit in *Lansford-Coaldale Joint Water Authority v. Tonolli Corp.*[50] found that the inclusion of the term "corporation" under the definition of "person," indicated Congress' intent to hold a corporation liable for actions of a subsidiary if it also operated the facility.[51] In the First Circuit, the *United States v. Kayser-Roth Corp* court,[52] found no reason why a parent corporation could not be held liable as an operator, concluding that a "fair reading" of CERCLA allows a parent to be held liable as an operator under CERCLA.[53] Thus, the circuit courts have interpreted the statute as indicating that, for purposes of CERCLA, a responsible party can be a corporation and that the corporation may be found liable as either an owner or an operator.

Courts which have interpreted the statute in this way use two separate standards for determination of a parent corporation's liability: the ability to control (an owner's derivative liability under common law) and actual control (an operator's direct liability under CERCLA).[54]

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[45] *See* Lansford-Coaldale Joint Water Auth. v. Tonolli Corp., 4 F.3d 1209,1221 n.11 (3rd Cir. 1993).

[46] 42 U.S.C. § 9601(21). This section defines person as "an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body." *Id.*

[47] United States v. Kayser-Roth Corp., 910 F.2d 24, 26 (1st Cir. 1990).

[48] 79 F.3d 248 (2nd Cir. 1996).

[49] *Id.* at 253.

[50] 4 F.3d 1209 (3rd Cir. 1993).

[51] *Id.* at 1221 n.11.

[52] 910 F.2d 24 (1st Cir. 1990).

[53] *Id.* at 27.

[54] *See Lansford-Coaldale Joint Water Auth.*, 4 F.3d at 1220-21.

A. Ability to control

In the1980s, the ability to control a subsidiary was enough to hold a parent corporation liable under CERCLA.[55] In *Idaho v. Bunker Hill Co.*,[56] the District Court of Idaho held a parent corporation liable for its subsidiary's cleanup costs because it had the ability to control the subsidiary's hazardous waste disposal.[57] The court noted that normal activities of a parent in regard to its subsidiary did not necessarily warrant a finding that a parent was an owner or operator.[58] The court considered the parent's familiarity with the hazardous disposal at the facility, the parent's capacity to control the releases, and the parent's authority to take action to prevent and abate the damage in making its decision.[59] The District Court of Colorado, in *Colorado v. Idarado Mining Co.*,[60] relied on the Federal Water Pollution Control Act's definition of "person in charge,"[61] for determining if a parent was an owner or operator.[62] This definition provides that "[t]he owner-operator of a vessel or facility has the capacity to make timely discovery of oil damages. The owner-operator has the power to direct the activities of persons who control the mechanisms causing the pollution. The owner-operator has the capacity to prevent and abate the damage."[63] The court also examined the percentage of the subsidiary's stock owned by the parent and the extent the parent controlled the subsidiary's marketing and selection, supervision, and transfer of the subsidiary's employees.[64]

In *Vermont v. Staco, Inc.*,[65] the District Court of Vermont based

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[55] *See generally* Vermont v. Staco, Inc., 684 F. Supp. 822 (D. Vt. 1988); Colorado v. Idarado Mining Co., 18 ELR 20578 (D. Colo. 1987); Idaho v. Bunker Hill Co., 635 F. Supp. 665 (D. Idaho 1986).

[56] 635 F. Supp. 665 (D. Idaho 1986).

[57] *See id.* at 671-72.

[58] *See id.* at 672.

[59] *See id.* at 672.

[60] 18 ELR 20578 (D. Colo. 1987).

[61] Federal Water Pollution Control Act, 33 U.S.C. §1321 (1994).

[62] Colorado v. Idarado Mining Co., 18 ELR 20578, at *3 (D. Colo. 1987).

[63] *Id.* at *3. *See also* United States v. Mobil Oil Corp., 464 F.2d 1124 (5th Cir 1972).

[64] *See Idarado Mining Co.*, 18 ELR 20578, at *3.

[65] 684 F. Supp. 822 (D. Vt. 1988).

CERCLA liability on responsibility rather than fault.[66] The court interpreted CERCLA to impose strict liability on both owners and operators of a facility that released hazardous substances.[67]

Finally, in *United States v. Nicolet, Inc.*,[68] the District Court for the Eastern District of Pennsylvania reasoned that a parent corporation could be liable under CERCLA for its subsidiary's contamination if it actively participated in the management of its subsidiary.[69]

B. Actual Control

In the 1990s, courts required more than the ability to control to hold parent corporations liable under CERCLA.[70] Rather, courts required that parent corporations exert actual control over the subsidiary.[71] In *United States v. Kayser-Roth Corp.*,[72] the court held that a parent would be liable if it was actively involved in the subsidiary's activities.[73] The court stated that "[t]o be an operator requires more than merely complete ownership and the concomitant general authority or ability to control that comes with ownership. At a minimum it requires active involvement in the activities of the subsidiary."[74]

In *Lansford-Coaldale Joint Water Authority v. Tonolli Corp.*,[75] the court rejected this "authority-to-control" test and adopted the "actual control" test.[76] The court stated that "[u]nder the actual control standard . . . a corporation cannot hide behind the corporate form to escape liability in those instances in which it played an active role in the management of a corporation responsible for environmental

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[66] *See id.* at 831.

[67] *See id.* at 831.

[68] 712 F. Supp. 1193 (E.D. Penn. 1989).

[69] *See id.* at 1203.

[70] *See* Aluminum Co. of America v. Beazer East, Inc., 124 F.3d 551 (3d Cir. 1997); Lansford-Coaldale Joint Water Auth. v. Tonolli Corp., 4 F.3d 1209 (3d Cir. 1993); United States v. Kayser-Roth Corp., 910 F.2d 24 (1st Cir. 1990).

[71] *See id.*

[72] 910 F.2d 24 (1st Cir. 1990).

[73] *See id.* at 27.

[74] *See id.* at 27.

[75] 4 F.3d 1209 (3d Cir. 1993).

[76] *See id.* at 1221.

wrongdoing."[77] Finally, in *Aluminum Co. of America v. Beazer East, Inc.*,[78] the court adopted the *Lansford-Coaldale* "actual control" standard and rejected the "authority-to-control" test.[79]

In at least one Fifth Circuit case, a court has followed corporate veil-piercing analysis to determine parent corporation liability.[80] In *Joslyn Mfg. Co. v. T.L. James & Co., Inc.*,[81] the Fifth Circuit concluded that CERCLA's definition of "owners" and "operators" did not include parent corporations of offending subsidiaries.[82] The court based its conclusion on the common law principle of limited liability of corporations.[83] Further, the court held that veil-piercing should be limited to situations where the corporate entity is used to perpetrate fraud or avoid liability.[84]

It is this disagreement among the circuits as to the appropriateness of finding direct operator liability under CERCLA in the absence of a finding of derivative liability under common law that forms the core issue before the Supreme Court in *United States v. Bestfoods*.

IV. OPINION AND REASONING

In *Bestfoods,* the Court established a clear, two prong rule for determining when a parent corporation should be held liable under CERCLA.[85] First, a parent corporation may be liable as an owner for its subsidiary's actions when the corporate veil is pierced under common law principles.[86] Second, a parent may be directly liable as an operator under CERCLA, if the parent "manage[s], direct[s], or conduct[s] operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental

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[77] *See id.* at 1221.
[78] 124 F.3d 551 (3d Cir. 1997).
[79] *See id.* at 563.
[80] *See* Joslyn Mfg. Co. v. T.L. James & Co., 893 F.2d 80 (5th Cir. 1990).
[81] *Id.*
[82] *See id.*at 82.
[83] *See id.*at 83.
[84] *See id.*at 83.
[85] *Bestfoods,* 118 S.Ct. at 1876.
[86] *See id.* at 1886.

regulations."[87] In this way, the Supreme Court clearly distinguished derivative from direct corporate liability. The Court held that active participation and control over a subsidiary alone is not enough to create liability unless the corporate veil may be pierced and derivative liability found.[88] However, a parent that "actively participated in, and exercised control over, the operations of the facility itself may be held *directly* liable in its own right as an operator of the facility."[89] Finding such direct liability was the issue in *Bestfoods*.[90]

The Court analyzed the two standards of liability. First, the Court looked at ownership and emphasized the common law's "bedrock principle" that mere stock ownership of a subsidiary does not create liability.[91] Nothing in CERCLA, the Court noted, changes this as "the Government has . . . made no claim that a corporate parent is liable as an owner or an operator . . . simply because its subsidiary is subject to liability." [92] The Court also noted the fundamental principle that shareholders may be held liable "when, inter alia, the corporate form would otherwise be misused to accomplish certain wrongful purposes," thus piercing the corporate veil.[93] Once pierced, derivative CERCLA liability may attach to the parent.[94]

The Court then looked at the liability of operators. Drawing on the writings of Justice Douglas, the Court emphasized the distinction between derivative liability cases and direct liability cases.[95] Direct liability attaches to the parent as a result of the wrongs it commits itself,[96] and, the Supreme Court emphasized, CERCLA does nothing to change this. "[N]othing in the statute's terms bars a parent corporation from direct liability for its own actions in operating a facility owned by

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[87] *Id.* at 1887.
[88] *See id.*
[89] *Id.* at 1881 (*emphasis added*).
[90] *See id.* at 1886.
[91] *See id.* at 1884.
[92] *Id.* at 1885.
[93] *Id.*
[94] *See id.*
[95] *See id.* at 1886.
[96] *See id.*

its subsidiary."[97] With a finding of direct liability, the issue of the parent-subsidiary relationship becomes "simply irrelevant."[98]

The lack of clarity in CERCLA's definition of "operator" led the Court to turn to the plain meaning of the term in order to identify whether there had been "direct parental operation" of the facility.[99] In defining the term, the Court held that "under CERCLA, an operator is simply someone who directs the workings of, manages, or conducts the affairs of a facility" and sharpened the definition by relating it specifically to polluting activity.[100]

With this background and understanding, the Court ruled the Sixth Circuit correct in rejecting the district court's finding of direct liability.[101] The district court had erred in fusing direct and indirect liability.[102] By focusing its analysis on the relationship between the two corporations, the district court failed to look at the interaction between the parent and the facility.[103] Control of the *facility* gives rise to direct liability on the part of the parent.[104] The factors involved in the relationship between the parent and subsidiary corporation (such as involvement in the board of directors) are sufficient only for derivative liability and only if the corporate veil may be pierced. In using these relationship factors as a basis to find direct liability, the district court failed to recognize that "it is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to liability for its subsidiary's acts."[105]

The Supreme Court noted that such an error in analysis treats CERCLA as if it supplants the common law. This approach would result in the demise of veil-piercing.[106] Such a result, the Court held, is

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[97] *Id.*

[98] *Id.*

[99] *See id.* at 1887.

[100] *Id.*

[101] *See id.* at 1887.

[102] *See id.*

[103] *See id.*

[104] *See id.* at 1886.

[105] *Id.* at 1888 (quoting American Protein Corp. v. AB Volvo, 844 F.2d 56, 57(2nd Cir. 1988).

[106] *See id.* at 1889.

not to be found in CERCLA.[107] Based on this analysis, the Court held that the use of a participation and control test to analyze the parent's control over the subsidiary (versus the facility) inappropriate to find direct liability.[108]

Returning again to the meaning of the term "operate," the Supreme Court went on to rule that the court of appeals did not fully analyze whether CPC was actually operating the facility.[109] Direct liability might be found by looking at whether dual officers or directors were in fact acting on behalf of the parent instead of the subsidiary, or if an agent of the parent managed or directed activities at the facility.[110] The existence of G.R.D. Williams, who worked only for the parent, raises the possibility of such direct control.[111] The Court wrote, "The critical question is whether, in degree and detail, actions directed to the facility by an agent of the parent alone are eccentric under accepted norms of parental oversight of a subsidiary's facility."[112] Given the high level of dispute over the role Williams played, the Court remanded the case back to the district court to evaluate his role, and that of any other agent, in possessing direct control over the subsidiary's facility.[113]

V. CONCLUSION

Congress enacted CERCLA to facilitate the cleanup of hazardous substances, and to charge responsible parties, rather than taxpayers, with the costs of the cleanup.[114] Accordingly, CERCLA allows the Environmental Protection Agency (EPA) "to seek injunctions to compel responsible parties to clean up hazardous waste sites that constitute an imminent and substantial endangerment to health and the environment."[115] One of the primary objectives of the Act is to

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[107] *See id.*

[108] *See id.*

[109] *See id.*

[110] *See id.*

[111] *See id.* at 1890.

[112] *Id.* at 1889.

[113] *See id.* at 1890.

[114] *See* Amy C. Stovall, *Limiting Operator Liability For Parent Corporations Under CERCLA:* United Sates v. Cordova Chemical Co., 43 VILL. L. REV. 219, 225 (1998).

[115] United States v. Northeastern Pharmaceutical & Chemical Co., 810 F.2d 726, 731 (8th Cir. 1985).

reach all parties responsible for the environmental damage.[116] In order to address Congress' concerns, courts must construe the statute liberally.[117] Prior to the *Bestfoods* decision, lower courts disagreed as to the correct standard to determine a parent corporation's liability.[118] Now a bright line test for all jurisdictions to follow has been established.[119]

In *Bestfoods,* the Supreme Court's decision is consistent with Congress' intention, as it construes the statute liberally in order to hold the parties responsible for contamination and liable for the cleanup costs. The Court's holding extinguishes the "beacon of hope" alluded to at the beginning of this comment, by holding that a parent corporation is liable for cleanup costs when the corporate veil is pierced, as well as when the corporation directly operates the contaminating facility.[120] The Court determined that the verb "to operate" meant mechanically activating pumps and valves and the exercise of direction over a facility's activities.[121] The Court further explained that its definition of "to operate" included a parent corporation operating a facility alongside its subsidiary or operating a facility itself.[122] As a result of this decision, the parties actually in control of contaminating facilities will be required to pay the costs.

Due to this bright line test established by *Bestfoods*, parent corporations, not just their subsidiaries, will be discouraged from committing violations in the future. Because it will no longer be questionable whether or not a parent corporation should be held liable for the cleanup costs, corporations that own and operate subsidiaries will be encouraged to comply with environmental regulations. They will either avoid causing contamination or initiate the necessary steps to provide for the proper cleanup of contaminated sites. In the future, if parent corporations are not willing to avoid contamination or to pay for cleanup, then they will refrain from operating subsidiaries in a

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[116] *See* Schiavone v. Pearce, 79 F.3d 248, 253 (2nd Cir. 1996).

[117] *See id.*; B.F. Goodrich, Co. v. Murtha, 958 F.2d 1192, 1198 (2d Cir. 1992); Anspec Co., v. Johnson Controls, Inc., 922 F.2d 1240, 1247 (6th Cir. 1990).

[118] *See* Stovall, *supra* note 115, at 283.

[119] *See Bestfoods*, 118 S.Ct. at 1876.

[120] *See id.* at 1889.

[121] *See id.*

[122] *See id.*

manner that causes contamination. The result of the *Bestfoods* decision will be to further Congress' ultimate goal of reducing contamination and charging responsible parties for the costs of cleaning up hazardous waste sites.