

tive exemptions to the reporting requirements for radionuclides. The court reasoned that although an agency has flexibility and need not provide a new round of notice and comment every time it modifies a rule, this is true only so long as the final rule is the logical outgrowth of the proposed rule. As the administrative exemptions contained in the final rule could not be considered a logical outgrowth of the proposed rule, the court found that EPA acted improperly in not affording interested parties an opportunity to comment. However, because the removal of the exemptions may affect EPA's ability to respond adequately to serious safety hazards, the court allowed the regulations to stay in place until EPA conducts a new round of notice and comment.

RIK TOZZI

*Joslyn Manufacturing Co. v. T.L. James & Co.*, 893 F.2d 80 (5th Cir. 1990), *cert. denied*, 111 S. Ct. 1017 (1991)

Joslyn Manufacturing Company (Joslyn), after being ordered to clean up an old creosoting plant under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675 (1988), appealed a summary judgment by the United States District Court for the Western District of Louisiana in favor of T.L. James & Co. (T.L. James), a parent company. Raw creosoting chemicals had dripped into a sump pit; some chemicals were subsequently discharged into a ditch and later flowed into a slough. The chemicals were then washed away by rain into surrounding land and waterways.

Joslyn claimed that T.L. James was liable for the cleanup under 42 U.S.C. § 9607(a)(2) as an "owner or operator" of the site. Alternatively, Joslyn contended that the corporate veil should be pierced, thereby imposing liability on the parent company, T.L. James. Joslyn urged the court to interpret CERCLA's definition of "owner or operator" to include parent corporations of subsidiaries found liable under the statute. Joslyn argued that such an interpretation has been adopted by other courts, including the Second Circuit. The court examined the language of CERCLA and determined that Joslyn's reading of the statute was overly broad. Instead, the court held that CERCLA did not include parent companies of offending wholly-

owned subsidiaries within the definition of "owner or operator." The court reasoned that, had Congress intended to alter the common-law principle of limited liability, some indication of this intent would be found in the legislative history. Absent such an express congressional directive, the court decided to leave any rewriting of the statute to Congress.

Further the court decided not to pierce the corporate veil because the plant was not used by T.L. James as a cover to perpetrate a fraud or for individuals to avoid personal liability. The Fifth Circuit, therefore, affirmed the district court's grant of summary judgment to T.L. James.

MELISSA SAWYERS

*North Shore Gas Co. v. EPA*, 930 F.2d 1239 (7th Cir. 1991)

Appellant North Shore Gas Company, a party potentially responsible for the cleanup of a Superfund site in a Lake Michigan harbor, sought to enjoin a portion of an Environmental Protection Agency (EPA) remedial plan directed against a third party. This plan required the third party to construct a boat slip in a second, overlapping Superfund site for which North Shore was responsible. North Shore contended that this construction would increase the costs for cleaning up their own portion of the harbor. North Shore brought suit under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901. The district court dismissed the suit. It found that the suit was barred by section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9613(h), which provides that federal courts do not have jurisdiction "to review any challenges to . . . remedial action selected under" the Superfund Amendments. North Shore appealed on the ground that the construction at issue was not a remedial act. EPA argued that the district court's dismissal should be upheld and that North Shore did not have standing to bring suit under NEPA and RCRA.

The Seventh Circuit concurred with EPA and held that North Shore did not have standing to bring a suit under NEPA and RCRA. The reasons were three-fold. First, the court emphasized the common-law rule that not everyone injured by a statute violation can bring suit to redress the violation. Thus,