

United States v. Parsons, 936 F.2d 526 (11th Cir. 1991)

The United States appealed the district court's judgment in an action to recover damages under the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA), 42 U.S.C. §§ 9601-9675 (1988). In accordance with its interpretation of CERCLA sections 9607(c)(3) and 9612(c), the district court awarded the government three times the costs it incurred in cleaning up hazardous chemicals unlawfully deposited by the defendants. The government claimed that the district court erred in its interpretation of CERCLA and requested recovery of its actual response costs under section 9612(c) in addition to three times those costs in punitive damages as provided by section 9607(c)(3).

The Eleventh Circuit noted the question of whether the government may recover its own actual response costs from dumpers of hazardous materials under section 9612(c) was an issue of first impression for the circuit courts. Under section 9612(c), the government acquires by subrogation the rights of an innocent party against dumpers when that innocent party cleans up the wastes and claims repayment of its costs from the CERCLA Fund. Section 9607(c)(3) then authorizes the President to commence a civil action against the dumpers for recovery of punitive damages in addition to any costs recovered under section 9612(c) in an amount to equal to, but not more than, three times those costs.

The court held that section 9607(c)(3) permitted the government to recover actual response costs plus punitive damages equal to three times those costs, even though the government did not recover actual cleanup costs as subrogee of the CERCLA Fund under section 9612(c). Thus, the court established that the government could recover four times the response costs expended by the CERCLA Fund in cleaning up the hazardous chemicals, whether those cleanup costs were incurred by an innocent private party or the government itself. The Eleventh Circuit vacated the district court's judgment and remanded the case for redetermination of the appropriate amount of damages to be calculated consistently with its interpretation of the statutory meaning of CERCLA sections 9607(c)(3) and 9612(c).

TOMMY MASON

B. Toxic Substances Control Act

All Regions Chemical Labs, Inc. v. Environmental Protection Agency, 932 F.2d 73 (1st Cir. 1991)

All Regions Chemical Labs, Inc. (All Regions) petitioned