

(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

for review of the amount of a penalty assessed by the Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 9609(b). All Regions was required to pay 20,000 dollars for their failure to immediately notify the National Response Center of a release of a hazardous substance. All Regions argued that EPA acted "arbitrarily, [and] capriciously," under 42 U.S.C. § 9609(b) and 5 U.S.C. § 706(2), in leveling such a significant penalty given that: state authorities were notified of the release, EPA received actual notice soon after the spill, and All Regions took immediate steps to remedy the situation.

Applying a deferential standard of review to EPA's interpretation of its own rules and regulations, the court did not find EPA's action "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The court rejected the petitioner's argument that EPA must consider surrounding circumstances when assessing a penalty. The court confirmed that under the Guidelines for the Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act, from which the standards applied in the case were borrowed, EPA could consider what might have happened in the absence of fortuitous events in assessing penalties. The court stressed that it was within EPA's legal authority to consider what might have happened from a failure to give immediate notice rather than what did happen, in assessing penalties.

The court also rejected All Regions' argument that EPA should have reduced the penalty in light of the cleanup costs. The court found no indication that cleanup costs and the penalty, taken together, were excessive.

DAVID GOOSSEN

C. Resource Conservation and Recovery Act

Chemical Waste Management, Inc. v. Templet, 770 F. Supp. 1142 (M.D. La. 1991)

The plaintiff owns and operates a Louisiana Department of Environmental Quality (LDEQ) authorized hazardous waste treatment, storage and disposal facility in Carlyss, Louisiana. The plaintiff intended to receive hazardous wastes from two Mexican companies, but was precluded by Louisiana Revised Statutes 30:2190 and 30:2191, which prohibited the importation of foreign generated hazardous wastes into Louisiana for the