

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

purpose of treatment, storage, and disposal. The plaintiff challenged the constitutionality of the Louisiana statutes on the grounds that they were inconsistent with the federal statutory provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901-6992 (1988), and were in violation of the Commerce Clause of the United States Constitution, art. I, section 8, cl. 3.

The court failed to reach a determination of the Louisiana statutes' constitutionality under RCRA, because it found that La. R.S. 30:2190 and 30:2191 violated both the Interstate and Foreign Commerce Clauses of the United States Constitution.

LDEQ argued that the absolute prohibition of foreign generated hazardous wastes was a valid health and safety measure, as the state could not adequately account for unknown or unauthorized pollutants in foreign hazardous wastes. The court rejected this proposition, however, finding that both the Mexican companies and the plaintiff's facility were required to comply with United States' environmental laws.

The court determined that the foreign generated hazardous waste which the plaintiff sought to import into Louisiana was an object of commerce and therefore merited constitutional Commerce Clause protection. The court rejected LDEQ's contention that an absolute ban on foreign generated hazardous waste was a valid exercise of the state's "quarantine power." The court reasoned that an absolute ban on an object of commerce based solely on its origin, without regard to factors such as the type of waste generated or the environmental laws of the foreign country involved, was an act of economic protectionism and per se discriminatory. The court declared La. R.S. 30:2190 and 30:2191 unconstitutional and issued a permanent injunction enjoining LDEQ from administering or enforcing these Louisiana statutes.

JED FERDINAND

*Dague v. City of Burlington*, 935 F.2d 1343 (2d Cir. 1991)

The city of Burlington, Vermont, appealed from a lower court decision which held that under Resource Conservation and Recovery Act (RCRA) and Clean Water Act (CWA) citizen suit provisions (42 U.S.C. § 6972 and 33 U.S.C. § 1365 respectively), notice and delay requirements did not apply where alle-