



Significant Decision affecting CERCLA

By Scott Davis, GeoSearch, August 2009

The United States Supreme Court has issued a significant decision that could have a huge effect on liability issues under CERCLA. *Burlington Northern & Santa Fe Railway Co. v. United States* (Case No. 07-1601, May, 2009). The decision holds that the EPA cannot hold a person liable as an "arranger" unless he "intended" for the waste to be disposed of; and there is no joint and several liability where a party can show a "reasonable basis" to apportion liability, and thus limit his own liability to the correct apportioned amount (orphan shares will be the responsibility of the U.S. government). The full ramifications of this decision will be felt for a long time to come, as the lawsuits that are bound to follow sort out how this will change the CERCLA landscape. But certainly, litigation over apportionment will increase, as will the number of arrangers claiming that they lack the requisite intent to be liable at all.

Sources: Industry of the Environment, Environmental Update