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Corporation Law: Looking Into Federal Common Law to Determine Parent Corporation Liability Under Cercla (United States v. Kayser-Roth Corp., Inc., 910 F.2d 24 (1st Cir. 1990))

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CORPORATE LAW: LOOKING TO FEDERAL COMMON LAW TO DETERMINE PARENT CORPORATION LIABILITY UNDER CERCLA* **

United States v. Kayser-Roth Corp., 910 F.2d 24 (1st Cir. 1990, *cert. denied*, 111 S. Ct. 957 (1991)

The United States Government brought suit[1] under the Comprehensive Environmental Response, Compensation and Liability Act[2] (CERCLA) against the parent corporation of a dissolved subsidiary[3] to recover cleanup costs caused by a hazardous substance spill.[4] The trial court found that the parent corporation's extensive control over its subsidiary was sufficient to hold the parent corporation liable as an "operator" of the subsidiary's activities.[5] The First Circuit Court of Appeals affirmed the district court decision and HELD, a parent corporation can be held liable as an "operator" of a subsidiary under CERCLA.[6]

In 1980, Congress addressed the issue of liability for hazardous waste with CERCLA. Congress enacted CERCLA[7] following the discovery of leaking hazardous waste disposal sites located throughout

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***Author's Note*: This comment is dedicated to my parents, Susan and Arvey for a lifetime of love, support, and encouragement. And to Pam for sharing her life with me. Thanks also to Terri R. Day, Christine M. Duignan and Alyson C. Flournoy for their generous and thoughtful readings and suggestions.

1. United States v. Kayser-Roth Corp., 724 F. Supp. 15 (D.R.I. 1989), *aff'd*, 910 F.2d 24 (1st Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

2. 42 U.S.C. §§ 9601-9657 (1988) [hereinafter CERCLA].

3. In keeping with the dissolution plan, the parent, Kayser-Roth Corporation (Kayser-Roth) received the subsidiary, Stamina Mills Inc.'s (Stamina Mills) assets and assumed "all liabilities and obligations" of Stamina Mills. 724 F. Supp. at 18.

4. *Id.* at 17. On several occasions, trichloroethylene (TCE), a chemical by-product of the textile industry, was released into the environment and filtered into residential water wells. *Id.*

5. *Id.* at 23. The district court also found the parent corporation liable as an "owner" by piercing the subsidiary's corporate veil. *Id.* at 24.

6. 910 F.2d at 28. The First Circuit Court of Appeals did not reach the issue of whether the parent corporation could be liable as an "owner" by piercing the corporate veil. *Id.* n.11.

7. CERCLA provides for emergency response, liability for the costs of cleanup, and compensation in the event of a release of a hazardous substance. 42 U.S.C. §§ 9604 & 9606-9607.

the United States.[8] CERCLA establishes a Hazardous Substance Response Fund[9] (the Superfund) of $1.6 billion, enabling federal and state agencies to clean up these hazardous waste disposal sites.[10] To maintain the fund, government agencies are authorized to recover "response costs"[11] from responsible parties.[12]

It is not clear whether Congress intended a parent corporation to be a responsible party under CERCLA and held directly liable as an operator for the hazardous activities of its subsidiary.[13] Section 107 imposes liability for response costs on "owners or operators"[14] of unsafe disposal facilities.[15] However, Congress circularly defined "operator" as "any person . . . operating [a] facility."[16] Thus, Congress did not expressly provide whether a parent corporation could be held liable as an "operator."[17] In the absence of a congressional directive,[18] the

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8. CERCLA is aimed at providing rapid responses to the national threat posed by 30-50,000 improperly managed hazardous waste sites in this country and to induce voluntary compliance in cleaning up those sites. 5 U.S.C.C.A.N. 6119-6120 (1980)

9. 42 U.S.C. § 9631(a), (c). The Superfund reimburses both government and private parties for the costs associated with cleaning up hazardous waste sites in the event the government cannot locate the responsible parties or the responsible parties fail to initiate their own cleanup. *Id.* § 9612(a).

10. Legislation aimed at environmental protection has been held to demand national uniformity. United States v. Carolina Transformer Co., 739 F. Supp. 1030, 1038 (E.D.N.C. 1989), *citing In re* Acushnet River & New Bedford Harbor Proceedings, 675 F. Supp 22, 31 (D.Mass.1987).

11. "Response costs" includes actions such as storage, confinement, dredging or excavations, and repair or replacement of leaking containers. 42 U.S.C. §§ 9601(23)-(25).

12. The Congressional history of CERCLA makes clear that those responsible for the problems caused by the hazardous wastes were intended to bear the costs and responsibilities for cleaning them up. 5 U.S.C.C.A.N. at 6119.

13. A parent company owns "more than 50 percent of the voting shares of another corporation, called its subsidiary." BLACKS LAW DICTIONARY 1004 (5th ed. 1979).

14. Section 107 also imposes liability on generators of hazardous substances sent to unsafe disposal facilities, and transporters of hazardous substances who select unsafe disposal facilities. *See* CERCLA §§ 107(a)(3)-(4), 42 U.S.C. §§ 9607(a)(3)-(4) (1982).

15. Section 107(a) of CERCLA confers liability on: "(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . ." 42 U.S.C. § 9607(a)

16. 42 U.S.C. § 9601(20)(A).

17. CERCLA has been described as "hastily conceived" and only "briefly debated" in discussions commenting on its failure to address numerous issues. Smith Land & Improv. Corp. v. Celotex Corp., 851 F.2d 86, 91 (3rd Cir. 1988). The legislative history of CERCLA suggests that liability under CERCLA was not limited to that which is expressly provided for in the statute. For example, Senator Florio, House sponsor of the bill, emphasized the use of federal common law by stating that "[t]o insure the development of a uniform rule of law, and to discourage business dealings in hazardous substances from locating primarily in states with more lenient laws, the bill will encourage the further development of a Federal common law in

common law doctrine of limited liability[19] will not hold a parent corporation indirectly liable for the wrongful conduct of its subsidiary without facts that support permitting piercing the corporate veil.[20] By merely observing various corporate formalities, a parent corporation can avoid "owner" liability even though it actively participated in its subsidiary's hazardous waste-dumping activities.

Relying on the common law principle of limited liability for shareholders,[21] the Fifth Circuit Court of Appeals in *Joslyn Manufacturing Co. v. T.L. James & Co.*,[22] refused to hold a parent corporation liable for the CERCLA violations of its wholly-owned subsidiary.[23] In *Joslyn*, the Environmental Protection Agency (EPA) ordered several corporations, including Joslyn Manufacturing Company (Joslyn),[24] to clean up the contaminated site of a former creosoting plant.[25] In response to the EPA's order, Joslyn sued the appellee, T.L. James & Co. (T.L. James), claiming that T.L. James was liable under CERCLA as an "owner or operator."[26] The Fifth Circuit affirmed the district court decision granting summary judgment in favor of the appellee.[27]

In affirming the district court's decision, the *Joslyn* court reasoned that in order for a court to alter a traditional concept of corporation

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this area." 126 CONG. REC. 31, 965 (1980) (this passage pertained specifically to the imposition of joint and several liability in CERCLA). *See also* Note, *Liability of Parent Corporations for Hazardous Waste Cleanup and Damages*, 99 HARV. L. REV. 986 (1986).

18. Congressional approval need not be explicit. *See infra* notes 33-35 and accompanying text.

19. One of the most significant attributes of the corporate structure is the limited liability of shareholders. The traditional basis for the concept of limited liability derives from viewing the corporation as a separate entity distinct from its shareholders. HARRY G. HENN, LAWS OF CORPORATIONS § 146, at 345 (3d ed. 1983). The doctrine of limited liability provides that a properly formed corporation will shield a shareholder from being held personally liable for the corporation's debts, limiting its losses to its investment. A shareholder is under no obligation to the corporation or its creditors other than the obligation to pay the corporation consideration for its shares. *Id.* § 202, at 547. This principle applies equally to a corporation that owns shares issued by another corporation. *Id.* § 148, at 335.

20. *Id.* § 148, at 355-56; *See infra* note 56.

21. *See supra* note 19 for a discussion of this doctrine.

22. 893 F.2d 80 (5th Cir. 1990).

23. *Id.* at 83.

24. *Id.* at 82. Joslyn purchased the plant in 1950 and sold it in 1969. *Id.*

25. *Id.* at 81. The Lincoln Creosoting Company, Inc, (Lincoln) a Louisiana corporation, was responsible for the discharge of raw creosoting chemicals into an open ditch which ultimately were washed away by rain to surrounding land areas and waterways. *Id.* Lincoln sold the plant to Joslyn in 1950. *See supra* note 24.

26. *Joslyn*, 893 F.2d at 81. *See* 42 U.S.C. § 9607(a)(2). The appellee, T.L. James, was the parent corporation of Lincoln when it was incorporated in 1935. 893 F.2d at 81.

27. *Joslyn*, 893 F.2d at 84.

law, Congress first must provide expressly for such a change.[28] The *Joslyn* court noted that CERCLA does not define "owner or operator" to include the parent company of a wholly-owned subsidiary.[29] Additionally, the court found nothing in the legislative history of CERCLA to indicate that Congress "intended to alter so substantially a basic tenet of corporate law."[30] The Fifth Circuit could not identify an express congressional directive providing for liability of a parent corporation as an "operator."[31] Therefore, the court based its decision on the common-law principle of limited liability and declined to impose direct liability on parent corporations.[32] It was irrelevant to the *Joslyn* court whether a parent corporation actively participates in its subsidiary's hazardous waste dumping activity. The court ruled, as a matter of law, that no level of participation would result in liability absent conduct sufficient to pierce the corporate veil. Despite the *Joslyn* decision, the lack of express congressional authority for parent "operator" liability does not prohibit the federal courts from providing for such liability.

The Supreme Court has enunciated that the federal courts have broad power to develop federal common law in cases arising under federal statutes.[33] In *Clearfield Trust Co. v. United States*,[34] the Supreme Court reasoned that where a federal statute does not expressly provide the applicable law, and there is an overriding federal interest, federal courts should fashion uniform rules of decision.[35] The Supreme Court has elaborated on the Clearfield Trust doctrine concluding that "the inevitable incompleteness presented by all legislation means that interstitial federal lawmaking is a basic responsibility of the federal courts."[36] Thus, federal courts interpreting a federal statute directed

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28. *Id.* at 82-83.

29. *Id.* at 82.

30. *Id.*

31. *Id.* at 83. The court stated that "[w]ithout an express Congressional directive to the contrary, common law principles of corporation law, such as limited liability, govern our court's analysis." *Id.*

32. *Id. See also* Edward Hines Lumber Co. v. Vulcan Materials Co., 861 F.2d 155, 157 (7th Cir. 1988) (limiting the scope of "operator" under CERCLA).

33. Clearfield Trust Co. v. United States, 318 U.S. 363 (1943).

34. 318 U.S. 363 (1943).

35. *Id.* at 366-67. *See also* United States v. Carolina Transformer Co., 739 F. Supp. 1030, 1038 (E.D.N.C. 1989) (holding that Congress, in enacting CERCLA, intended uniform federal rules of liability to develop through federal decisions); MARTHA A. FIELD, *Sources of Law: The Scope of Federal Common Law*, 99 HARV. L. REV. 881 (1986).

36. United States v. Little Lake Misere Land Co., 412 U.S. 580, 593 (1973). *See* United States v. Chem-Dyne Corp., 872 F. Supp. 802, 808 (S.D. Ohio 1983) (applying *Little Lake* within the context of CERCLA).

toward uniquely federal concerns are empowered to apply federal common law.

Federal courts have embraced the Clearfield Trust doctrine and applied federal common law when analyzing "operator" liability under CERCLA. In *New York v. Shore Realty Corp.*,[37] the Second Circuit Court of Appeals did not require express congressional authority for holding the sole shareholder of a corporation liable as an "operator."[38] The appellant incorporated Shore Realty Corporation for the purpose of purchasing property in order to develop condominiums.[39] Situated on the property were corroded tanks and drums that leaked hazardous chemicals.[40] Appellant took title to the property with knowledge of the leaking chemicals,[41] and during the subsequent three months, 90,000 gallons of hazardous chemicals were added to the tanks.[42] The State of New York sued the appellant seeking to recover "response costs."[43] In evaluating the state's claim, the *Shore* court held that the appellant, in the capacity of stockholder and officer, was liable as an "operator" under CERCLA.[44] Influencing the *Shore* decision was the exclusion from CERCLA's definition of "owner or operator," of "a person who, without participating in the management of a . . . facility, holds indicia of ownership primarily to protect his security interest in the facility."[45] Based upon this language, the court concluded that a stockholder who actively manages a corporation may be held liable under CERCLA as an "operator."[46]

In the instant case, the First Circuit Court of Appeals held that under CERCLA a parent corporation may be directly liable as an "operator."[47] The court noted that CERCLA is a remedial statute designed by Congress to protect and preserve public health and the environment.[48] As a remedial statute, CERCLA must be construed liberally so that the statute can achieve its beneficial purpose.[49]

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37. 759 F.2d 1032 (2d Cir. 1985).

38. *Id.* at 1052.

39. *Id.* at 1038.

40. *Id.* It was beyond dispute that the tanks and drums contained "hazardous substances" under CERCLA, 42 U.S.C. § 9601(14). 759 F.2d at 1038.

41. *Shore*, 759 F.2d at 1038.

42. *Id.* Tenants on the property were responsible for the further accumulation of these hazardous substances. *Id.*

43. *Id. See* 42 U.S.C. § 9607(a)(4)(A).

44. *Shore*, 759 F.2d at 1052.

45. *Id.* 42 U.S.C. § 9601(20)(A).

46. *Shore*, 759 F.2d at 1052.

47. *Kayser-Roth*, 910 F.2d 24 (1st Cir. 1990); *supra* notes 1-6 and accompanying text.

48. *Kayser-Roth*, 910 F.2d at 26.

49. *Id* at 25-26.

The instant court's analysis primarily relies upon the fact that no apparent reason exists for not holding a parent corporation liable as an "operator."[50] In this regard, the instant court found Congress' use of the conjunction "or" in delimiting the liability category of CERCLA to be indicative of Congress' willingness to find "owners" liable as "operators."[51] Furthermore, the instant court found relevant the legislative history of CERCLA, which is silent on Congress' intention to exclude parent corporations from the definition of "operator."[52] Additionally, the instant opinion relies on other courts' interpretations of "operator" which suggest that an ownership interest in a corporation may result in "operator" liability under CERCLA.[53] In its decision, the instant court discussed *Joslyn Manufacturing Co. v. T.L. James & Co.*,[54] finding *Joslyn* distinguishable on its facts.[55] The instant court stated that by framing the issue as whether to "impose direct liability on parent corporations for the violations of their wholly owned subsidiaries," the *Joslyn* court's analysis really was directed toward "owner" liability and the determination of whether it was appropriate to pierce the corporate veil.[56]

In contrast to the "owner" liability analysis of the *Joslyn* court, the instant court stressed that the instant facts presented a case of

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50. *Id.* at 26.

51. *Id.* The court concluded from this purposeful grammatical structure that corporate status, "while relevant to determining ownership, cannot shield a person from operator liability." *Id.*

52. *Id. See also Shore*, 759 F.2d at 1044.

53. *Kaiser-Roth*, 910 F.2d at 26. *See, e.g.*, United States v. Northeastern Pharmaceutical & Chem. Co., 810 F.2d 726, 744 (8th Cir. 1986), *cert. denied*, 484 U.S. 848 (1987) (holding liable an individual who arranged for the disposal of hazardous substances in violation of CERCLA without piercing the corporate veil); Idaho v. Bunker Hill Co., 635 F. Supp. 665 (D.C. Idaho 1986) (parent corporation held liable as an "operator"); *Shore*, 759 F.2d 1032 (holding a majority shareholder of a corporation liable under CERCLA as an "operator").

54. 893 F.2d 80 (5th Cir. 1990), *cert. denied*, 111 S. Ct. 34 (1991).

55. Kaiser-Roth, 910 F.2d at 27. The instant court also noted the decision in Riverside Market Devel. Corp. v. International Bldg. Prod., 1990 U.S. Dist. LEXIS 6375 (E.D. La. 1990) where the *Joslyn* court's holding was narrowly interpreted to apply where the parent does not participate in the activities of the subsidiary.

56. 910 F.2d at 27. In evaluating CERCLA liability for a parent corporation, the terms direct and indirect are generally associated with "operator" and "owner" status, respectively. A parent corporation would be liable as an "operator" if it exercised a significant role in the operations and management of a facility. An operator would be more directly linked to a chemical spill than would an "owner" whose responsibility for the spill is limited to its ownership of the plant. Under CERCLA, neither status indicates greater liability. 42 U.S.C. § 9607. A parent corporation's ownership would be indirectly exposed by piercing the corporate veil of its subsidiary. *Kayser-Roth*, 910 F.2d at 25.

whether it was appropriate to hold a parent corporation liable directly for its activities as an "operator" and not indirectly for the activities of a subsidiary.[57] The instant court stated that it would be unusual for the parent corporation of a wholly-owned subsidiary to be held liable as an "operator" of the subsidiary.[58] Before a parent corporation would be classified as an "operator," more than complete ownership and general authority or control over the subsidiary would need to be demonstrated.[59] Ultimately, the parent must be actively involved in the activities of the subsidiary.[60] In the instant case, the court found that the parent corporation "exerted practical total influence and control over" its subsidiary's operations,[61] including control over environmental matters.[62] Consequently, the instant court concluded that these facts were sufficient to find the parent corporation liable as an "operator."[63]

By examining the history, language and policy behind CERCLA, Congress' intent in holding "owners or operators" liable may be discerned. On its surface, CERCLA could be interpreted to limit "operator" status to those persons involved in the management of unsafe waste disposal facilities without an ownership interest, while "owner" status could be applied exclusively to those persons possessing an ownership interest.[64] Given the unlikely scenario of a parent corporation playing a significant role in the daily operations of its subsidiary,[65] it would be unnecessary for courts to contemplate a parent

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57. *Id.* Finding a parent corporation indirectly liable as an "owner" requires meeting the heavy burden of proving "that the corporate entity is used as a sham to perpetrate a fraud or to avoid personal liability. *See Joslyn*, 893 F.2d at 83; United States v. Jon-T Chem., Inc., 768 F.2d 686 (5th Cir. 1985), *cert. denied*, 475 U.S. 1014 (1986).

58. *Kayser-Roth*, 910 F.2d at 27.

59. *Id.*

60. *Id.*

61. *Id.* Evidence the court relied on indicating Kayser-Roth's extensive control over the Stamina Mills' activities included extensive monetary control, the requirement that Kayser-Roth approve all decisions regarding real estate transactions, and the placement of Kayser-Roth personnel in almost all Stamina Mills', director and office positions to ensure that Kayser-Roth's corporate policy prevailed. *Id.*

62. *Id.* The instant court approved the district court's finding that Kayser-Roth had the power to control the release or threat of release of TCE, to direct the mechanisms causing the release and that Kayser-Roth had the ultimate ability to prevent and abate damages. *Id.* Additionally, it found that Kayser-Roth approved the installation of the scouring system that used TCE. *Id.* at 28.

63. *Id.*

64. Placing the label "operator" on a subsidiary that was clearly liable as an "owner," for purposes of ascribing liability, is redundant. CERCLA liability is strict, joint and several.

65. *See supra* text accompanying note 58.

corporation possessing an "operator" status.[66] In light of this restrictive construction of the "owner or operator" language of CERCLA, the *Joslyn* court's emphasis on Congress' silence regarding parent liability is understandable. The mere fact that application of "operator" liability need not encompass parent corporations, however, does not justify withholding that label when such an application clearly serves the purpose of CERCLA.[67]

If parent corporations that play a significant role in the management and operation of their subsidiaries escape liability, no one will assume financial responsibility for many CERCLA violations.[68] Under this scenario, the government's efforts to recover response costs would be thwarted by the depletion of the Superfund before dangerous disposal sites can be cleaned up. While this concern alone does not justify holding parent corporations liable, both legal and social policy considerations support holding a certain subset of parent corporations liable as "operators."[69]

The *Joslyn* court's analysis requiring an express congressional directive before the court would hold a parent corporation liable as an "operator" ignores the federal court's broad power to develop federal common law in cases arising under federal statutes.[70] While federal court decisions may not ignore Congress' intent, CERCLA's language indicates that Congress would approve holding those parent corporations responsible for hazardous spills liable as "operators." Indeed, if "operator" status were deemed inapplicable to parent corporations, in those circumstances where a corporation's decision regarding the disposal of hazardous waste directly causes a spill, the corporation, immediately responsible for the accident, would escape liability. As the instant court recognized, Congress' use of the conjunction "or" suggests that a person could be liable as both an "owner" and "operator";[71] therefore, an operator could not claim protection from liability on the basis of being an "owner."

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66. An entity (*e.g.*, subsidiary) possessing ownership of an unsafe disposal facility was liable as an "owner" while a management company without an ownership interest was also liable under CERCLA as an "operator." All entities contributing to the unsafe disposal of hazardous substances were within the reach of CERCLA. Indeed, a parent corporation would be liable by piercing the corporate veil.

67. *See supra* note 13.

68. A subsidiary may be insolvent, and with no "operator" to charge with the violation, there is no source to reimburse the Superfund or a private entity for cleaning up a spill.

69. *See* Note, *supra* note 17.

70. *See supra* notes 33-35 and accompanying text.

71. *Id.*

This conjunctive language would be superfluous if Congress intended courts to apply "operator" liability only to a subsidiary, because liability already would have attached due to ownership. When applied to a parent corporation this dual status becomes meaningful. For a parent corporation, "owner" liability is obtained by piercing the corporate veil.[72] "Operator" status is aimed at providing an alternate source of liability for parent corporations. Under this conception, a parent corporation shielded from "owner" liability by properly adhering to corporate formality may nonetheless be held liable when it is responsible for a hazardous spill.[73] CERCLA represents an attempt to provide a federal solution to a nationwide problem.[74] When the Clearfield Trust doctrine[75] is viewed in light of Congress' implicit approval of parent corporation liability, the decision among numerous federal courts to expand "operator" liability to include parent corporations is sound.[76] Otherwise, a corporation could selectively choose to operate a waste dumping facility in a state reluctant to impose liability on parent corporations. As a result, state law could be employed to frustrate the compelling national policies underlying CERCLA.

Several policy considerations also support finding parent corporations liable as "operators." Under certain circumstances, parent corporations emerge as the only source of financial compensation available.[77] Failing to include this group is tantamount to permitting them to shirk responsibility and would undermine the purposes of CERCLA.[78] Clearly, the longevity of the Superfund and the ability of CERCLA to affect its intended purpose would be severely threatened by excluding parent corporations from "operator" liability. Furthermore, limiting parent corporation liability would encourage investment in inefficient hazardous waste disposal activities.[79] Parent corporations would benefit by setting up hazardous waste disposal operations in undercapitalized and poorly monitored subsidiaries. This undercapitalization in turn would increase the risk of future releases of hazardous waste.[80] Under the federal courts' present corporate veil analysis, this conduct

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72. *See supra* note 51 and accompanying text.
73. *See supra* text accompanying notes 44-46.
74. *See supra* note 12.
75. *See supra* notes 33-36 and accompanying text.
76. *See supra* note 13.
77. *See supra* note 67.
78. *See supra* notes 10-14 and accompanying text.
79. *See* Note, *supra* note 17, at 988.
80. *See generally*, Note, *supra* note 17 (discussing the justification for holding parent corporations liable for the wrongdoing of its subsidiaries).

would be insufficient to find a parent corporation liable as an "owner."[81] By applying the "operator" label to parent corporations, it is unnecessary for federal courts to fashion a corporate veil analysis to fit a set of facts involving corporate participation, but not corporate fraud. Thus, holding parent corporations potentially liable as "operators" preserves the common law doctrine of limited liability.[82] To the extent parent corporations refrain from participating in the daily operations and management of its subsidiaries, "operator" liability will be inapplicable.[83] Where corporate formalities are adhered to, parent corporations will not be required to pay for their subsidiary's hazardous activities.

By looking to federal common law, courts may hold parent corporations liable for the disposal of hazardous substances when these corporations "operate" their subsidiaries' activities. Although this type of parent corporation liability is without express Congressional support, the urgent need for a national policy regarding hazardous waste cleanup, coupled with Congress' tacit approval of parent corporate liability, fully justifies this outcome. Application of this rule will create strong incentives for corporations to exercise caution when overseeing hazardous waste disposal activities. It would be devastating to our nation's environment to permit parent corporations to escape liability when actively participating in the very activities that result in the unsafe disposal of hazardous waste.

Scott Rogers

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81. *See supra* note 57.

82. This argument does not suggest that the federal courts are not permitted to create a federal common law regarding piercing the corporate veil. Rather, it stands for the proposition that the courts can create a federal common law regarding "operator" liability without at the same time affecting traditional corporate veil analysis.

83. In this situation, a plaintiff must establish facts sufficient to pierce the corporate veil in order to find a parent corporation liable.