

# SECURING CONTRIBUTION PROTECTION IN PRIVATE PARTY CERCLA LITIGATION



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ATTORNEYS AND COUNSELORS AT LAW



EMSL AERIAL PHOTO, 1985

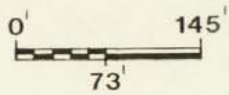


FIGURE 2-5  
2-14

# 1998



1998



1998





**DOUBLE EAGLE REFINERY**

N Martin Luther King Ave

Image U.S. Geological Survey

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Pointer 35°28'03.82" N 97°28'42.54" W elev 1168 ft Streaming ||||| 100%

Eye alt 2157 ft

# Monitoring Well at Double Eagle



# 2006



# CERCLA Objectives

- (1) to achieve the prompt and effective cleanup of hazardous waste sites; and
- (2) to allocate the cost of cleanup to those responsible for the contamination.

# Contribution Actions

- Suits by a PRP seeking reimbursement for a portion of its cleanup costs from other PRPs

# Contribution Protection

- Settlers with the government are provided contribution protection under CERCLA
- Settlers with private party plaintiffs do not receive contribution protection under CERCLA

# Court's Jurisdiction to Enter Order for Contribution Bar

- All Writs Act, 28 U.S.C. 1651(a) authorizes courts to issue writs/injunctions
  - to protect jurisdiction
  - to effectuate judgments

# Court's Jurisdiction to Enter Order for Contribution Bar

- Fed. R. Civ. P. 54(b) district courts can enter judgment against fewer than all of the parties in a multi-party lawsuit when
  - No just reason for delay and
  - Express order for entry of judgment

# Uniform Contribution Among Tortfeasors Act 12 U.L.A. 98 (1975) “UCATA”

“When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury . . . (b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.” UCATA § 4

# UCATA

- Equitable apportionment regardless of settlement amount
- Credit given to non-settling defendants not based on settlement amount
- “Fairness hearing” to determine fairness of settlement

# Uniform Comparative Fault Act

12 U.L.A. 44 (West supp. 1992) “UCFA”

- “A release . . . between claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other person liable for the same claim unless it so provides. . .
- . . . the claim of the releasing person against other persons is reduced by the amount of the released person’s equitable share of the obligation . . . .” UCFA § 6.

# UCFA

- Proportionate liability credit to non-settling defendants
- If settlement amount is too low, plaintiffs, will have to make up the difference

# Benefits of Contribution Protection

- Promotes the purposes of CERCLA:
  - Prompt, effective cleanup
  - Allocation of cleanup costs to those responsible
- Promotes settlement
- Conserves judicial resources
- Allows settlers to buy peace

# PRESENTED BY

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