

United States v. Burlington Northern & Santa Fe Railway Co. (Ninth Circuit)  
Decided March 16, 2007.

A company, now defunct, operated a chemical storage and distribution facility on land partly owned by two railroad companies. The chemicals were supplied by Shell Oil. Contamination was discovered, and the US EPA and state DTSC proceeded to clean up the site because of threatened groundwater contamination. The agencies filed suit against Shell and others under the federal Superfund (CERCLA). The district court held Shell was liable as an “arranger” under CERCLA but apportioned its liability to 6% and held the railroad landowners’ liability as landowners was apportioned to 6%. The agencies appealed. The Court of Appeal affirmed the finding of liability but reversed as to the apportionment, finding the parties were “jointly and severally” liable to the governmental agencies, and that there was insufficient evidence supporting an apportionment of their liability.