CONSTITUTIONAL IMPLICATIONS OF CERCLA: DUE PROCESS CHALLENGES TO RESPONSE COSTS AND RETROACTIVE LIABILITY

I. INTRODUCTION

Congress enacted the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)[1] on December 11, 1980 to establish a comprehensive response and liability mechanism that would control and clean up hazardous substance releases into the environment and provide compensation for costs incurred in responding to these releases.[2] Courts are faced with two separate, yet related issues regarding the retroactive application of CERCLA. The first issue is whether responsible parties, such as waste generators and transporters, are liable for response costs incurred before CERCLA's enactment.[3]

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1. 42 U.S.C. §§ 9601-9657 (1982) (commonly referred to in terms of "one hundred" numbers, e.g., §§ 101-157 respectively).

2. The sections of CERCLA that are relevant to the control and cleanup of releases of hazardous substances are §§ 104-107, 111-112, and 131. Section 104 provides for government response to the release of a hazardous substance. Section 105 directs the President to revise the National Oil and Hazardous Substances Pollution Contingency Plan, originally prepared under the Federal Water Pollution Control Act, 33 U.S.C. § 1321, to effectuate the new responsibilities and powers that CERCLA creates. The amended National Contingency Plan is codified at 40 C.F.R. § 300 (1985).

Under § 106, the President may commence an enforcement action to abate an actual or threatened release of a hazardous substance if there is an imminent and substantial endangerment to the public health or welfare, or to the environment. Section 107 provides for liability of certain responsible parties for costs incurred in responding to releases of hazardous substances and for injury to national resources.

Section 131 establishes a 1.6 billion dollar "superfund" to remedy or prevent releases or threatened releases of hazardous substances into the environment. Section 111 governs use of the superfund, and § 112 sets forth the procedure for making claims against the fund.

3. Generally, response costs are those costs incurred by the government in cleaning up or controlling the release of a hazardous substance. *See* United States v. Shell Oil Co., 22 Env't Rep. Cas. (BNA) 1473 (D. Colo. 1985); United States v. Northeastern Pharmaceutical & Chem. Co. (NEPACCO), 579 F. Supp. 823 (W.D. Mo. 1984); United States v. Morton-Thiokol, Inc., No. 83-4787 (D.N.J. July 2, 1984); United States v. Wade, 546 F. Supp. 785 (E.D. Pa. 1982) (Wade I). Few courts have actually addressed

The second issue is whether responsible parties are liable for acts committed before CERCLA's enactment. Challengers to the retroactive application of CERCLA argue that the imposition of retroactive liability deprives them of property without due process of law.[4] This Recent Development addresses the question of whether CERCLA applies retroactively to response costs and to liability for releases of hazardous substances. In addition, it examines whether the retroactive application of CERCLA violates the due process clause of the fifth amendment.[5]

II. RETROACTIVITY

A retroactive statute applies to transactions or activities occurring prior to the enactment of the statute, and imposes duties or liabilities as to those past transactions or activities.[6] A retroactive application may create a new obligation, impose a new duty, or attach a disability with respect to transactions or considerations already past.[7] The retroactive application of a statute is not unconstitutional unless Congress, in enacting it, acts in an arbitrary or irrational manner.[8] Environmental

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the definition or dimension of a response cost. *But see* Environmental Defense Fund v. Lamphier, 12 Envtl. L. Rep. (Envtl. L. Inst.) 20843 (E.D. Va. 1982) (holding that investigation costs do not amount to response costs), *aff'd*, 714 F.2d 331 (4th Cir. 1983). Response costs are not defined in CERCLA. "Response" is defined as "removal, remove, remedy, and remedial action." 42 U.S.C. § 9601(25). "Remove" and "removal" are defined as the cleanup or removal of released hazardous substances from the environment or actions taken to prevent the release of hazardous substances or to prevent, minimize, or mitigate damage to the public health or welfare or to the environment. *Id.* § 9601(23). "Remedy" and "remedial action" are defined as actions taken to permanently remedy instead of or in addition to removal actions in the event of a release or threatened release of hazardous substance into the environment. The term includes but is not limited to actions such as storage, confinement, perimeter protection using dikes or trenches, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes. *Id.* § 9601(24). Response costs must be necessary and consistent with the National Contingency Plan. *Id.* § 9601(a)(4)(B). *See infra* notes 11-25 and accompanying text.

4. *See infra* notes 31-47 and accompanying text.

5. U.S. CONST. amend. V. This amendment states in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

6. Society for Propagating the Gospel v. Wheeler, 22 F. Cas. 756 (C.C.D.N.H. 1814) (No. 13,156); *see* Note, *Generator Liability Under Superfund for Clean-up of Abandoned Hazardous Waste Dumpsites*, 130 U. PA. L. REV. 1229, 1235 (1982).

7. 22 F. Cas. at 767.

8. Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15 (1976). The fact that a statute has retroactive application and may upset settled expectations does not necessarily make it unconstitutional. This is so even if the effect of the legislation is to impose a

statutes like CERCLA that regulate and adjust the benefits and burdens of economic life are accorded a strong presumption of constitutionality.[9] It is clear from the legislative history and the nature of CERCLA that Congress intended to have the chemical industry, past and present, pay for the costs of cleaning up inactive waste sites.[10]

III. CERCLA AND RETROACTIVE RECOVERY OF RESPONSE COSTS

Several federal district courts have addressed the issue of retroactive recovery of response costs under CERCLA.[11] Most of these courts decided that response costs incurred prior to December 11, 1980, are not recoverable.[12] In *United States v. Shell Oil Co.*,[13] however, a federal

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new duty or liability for past acts. Lichter v. United States, 334 U.S. 742 (1948); Welch v. Henry, 305 U.S. 134 (1938).

The *Turner* court implied that in the area of economic regulation, legislation that operates retroactively does not violate due process if it is rationally related to a valid congressional purpose. 428 U.S. at 16-20.

The court in United States v. South Carolina Recycling & Disposal, Inc., 20 Env't Rep. Cas. (BNA) 1753 (D.S.C. 1984), held that the relationship between congressional goals and the means chosen to implement them under CERCLA were rational. *But see* United States v. NEPACCO, 579 F. Supp. 823, 839 (W.D. Mo. 1984) (legislation is presumed to apply prospectively and it is the plaintiff's burden of proof to show that the statute is to be given retroactive effect).

9. *See* Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 83-84 (1978).

10. S. REP. No. 848, 96th Cong., 2d Sess. 12 (1980) (the objective of CERCLA is to spread the cost of hazardous waste cleanup among those responsible for the damage). The goals of CERCLA are twofold: (1) cleaning up hazardous waste sites; and (2) holding the responsible parties liable for the cost of cleanup.

There are several different methods that the EPA can utilize to ensure that a cleanup takes place. One option is to use superfund money to clean the site, and then institute a cost recovery action against the responsible party. 42 U.S.C. § 9607(4). *See also* Aminoil, Inc. v. E.P.A., 599 F. Supp. 69, 73 (C.D. Calif. 1984). Due to the number of sites in need of cleanup and the limited amount of available funds, Congress established a second method for cleaning up hazardous waste. *See* 42 U.S.C. § 9606(a). In enforcing CERCLA, the EPA does not rely on § 107, because the estimated cost of cleanup for all sites would far exceed the federal funding currently available. *See* Orloff, *Superfund and the Courts*, ENVTL. F. 5 (Jan. 1983). Under § 106(a), the EPA can order the responsible party to clean up the hazardous waste site.

11. *See supra* note 3 and accompanying text for a discussion of what constitutes a response cost.

12. *See* United States v. NEPACCO, 579 F. Supp. 823 (W.D. Mo. 1984); United States v. Morton-Thiokol, Inc., No. 83-4787 (D.N.J. July 2, 1984); United States v. Wade, 546 F. Supp. 785 (E.D. Pa. 1982) (Wade I). *See infra* note 24 and accompanying text for discussion of the *Wade* case.

district court reached a contrary result. After examining CERCLA's language and legislative history, the *Shell* court concluded that retroactive application was consistent with congressional intent. The court acknowledged the presumption against retroactive application of statutes,[14] but noted that such an interpretation is appropriate if the unequivocal import of a statute's terms of the manifest intention of the legislature so demands.[15] The *Shell* court determined that section 107 neither explicitly provides for recovery of response costs incurred before CERCLA's enactment nor explicitly limits recovery to costs incurred after its enactment.[16] As a result of this ambiguity, the court looked to other CERCLA provisions and the legislative history to determine congressional intent.

After reviewing the legislative history, the *Shell* court relied on the traditional rules of statutory interpretation to conclude that CERCLA applies retroactively. The court reasoned that statutes are passed as a whole, not in parts, and they advance one general purpose.[17] The court stated that the interpretation of any subsidiary part of a statute should harmonize with its general purpose.[18] The House Committee on Interstate and Foreign Commerce reported that its intent was to initiate and establish a comprehensive response and financing mechanism to abate and control abandoned and inactive hazardous waste disposal sites.[19] Section 107(a) sets up the categories of persons who are liable for costs incurred in cleanup. Congress designed the liability scheme to assure that those responsible for any damage, environmental

13. 22 Env't Rep. Cas. (BNA) 1473 (D. Colo. 1985).

14. *See* 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 41.04 (C. Sands 4th ed. 1973).

15. 22 Env't Rep. Cas. (BNA) at 1475 (citing Union Pacific R.R. v. Laramie Stock Yards Co., 231 U.S. 190, 199 (1913)).

16. 22 Env't Rep. Cas. (BNA) at 1476.

17. *Id.* (citing 2A SUTHERLAND, *supra* note 14, § 46.05).

18. *Id.*

19. H.R. REP. No. 1016, 96th Cong., 2d Sess. 22, *reprinted in* 1980 U.S. CODE CONG. & ADMIN. NEWS 6119, 6125; *see also* Preamble to CERCLA, Pub. L. No. 96-510, 94 Stat. 2767 (1980) (CERCLA enacted to provide for the cleanup of inactive hazardous waste disposal sites).

Though pre-CERCLA law could prevent further pollution from the contemporary generation and disposal of hazardous wastes, it could not effectively abate the ongoing environmental deterioration resulting from wastes dumped in the past. Congress enacted CERCLA to address those problems. It is by nature retrospective because many of the human acts that have caused the pollution took place before its enactment. 22 Env't Rep. Cas. (BNA) at 1479.

harm, or injury from chemical poisons bear the costs of their actions.[20] The *Shell* court concluded that under such a liability scheme, retroactive application of CERCLA was unavoidable.[21]

Moreover, the court noted that section 107(a) is silent on the issue of retroactive liability for any of the damages recoverable under that section.[22] Sections 107(f) and 111(d),[23] however, clearly provide specific time limits on recovery for pre-enactment natural resource damages. The *Shell* court reasoned that if Congress intended to limit recovery of pre-enactment costs, it would have done so explicitly.[24] The court determined that the absence of contrary statutory language and Congress' pervasive intent to hold responsible parties liable overrides the presumption against retroactive application of statutes.[25]

Although the *Shell* court held that CERCLA applied retroactively to response costs, it did not address the due process issue arising from

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20. S. REP. No. 848, 96th Cong., 2d Sess. 1, 13 (1980).

21. 22 Env't Rep. Cas. (BNA) at 2479. Congressional intent of CERCLA was to impose the cost of cleanup on those responsible rather than on the taxpayers. This strongly indicates that Congress intended to hold responsible parties liable for pre-enactment government response costs. *Id.*

22. 22 Env't Rep. Cas. (BNA) at 1479-80.

23. 42 U.S.C. §§ 9607(d), 9611(d) (1982).

24. 22 Env't Rep. Cas. (BNA) at 1481. *Cf.* United States v. NEPACCO, 579 F. Supp. 823, 842 (W.D. Mo. 1984). The *NEPACCO* court placed great emphasis on the fact that "there is no clear and affirmative statement in the statute allowing for recovery of pre-enactment response costs." *Id.* The court held that all doubts of retroactive application must be resolved in favor of non-retroactivity. *Id.* at 843.

In United States v. Wade, 546 F. Supp. 785 (E.D. Pa. 1982), the court was similarly troubled by the lack of an explicit congressional statement. *Id.* at 787. The court interpreted this omission as evidence of Congress' intent not to allow recovery of such costs. The *Wade* court drew its conclusion after reasoning that the limitation on recovery for natural resources damage is a limitation based on the time at which the damage occurred, not on the time at which funds are spent to repair the damages. *Id.* at 786.

Congress was aware of the magnitude of pre-CERCLA costs. *See* 126 CONG. REC. S30,969-71 (1980). (remarks of Senator Moynihan concerning cleanup costs of Love Canal, and remarks of Senator Bradley concerning the cleanup costs of Elizabeth, N. J.). Moreover, no mention was made of recouping these costs in CERCLA.

The *Shell* court rejected the *Wade* court's reasoning and discerned that recovery of funds spent for response actions is analytically equivalent to recovery for damage to natural resources. 22 Env't Rep. Cas. (BNA) at 1482. *Accord* Thorpe v. Housing Auth., 393 U.S. 268 (1969).

25. 22 Env't Rep. Cas. (BNA) at 1482. *See also* United States v. Heth, 7 U.S. (3 Cranch) 399, 413 (1806) (there is a strong presumption against retroactive construction of statutes, but the presumption is rebutted when it is clear that Congress intended the statute to be applied retroactively).

the assessment of those costs. Retroactive imposition of liability upon responsible parties has not been challenged on due process grounds.

IV. RETROACTIVE LIABILITY UNDER CERCLA AND DUE PROCESS

The federal courts were not confronted with the issue of whether CERCLA applied retroactively, imposing liability on contributors for pre-enactment waste activities, until 1983. In *Ohio v. Georgeoff*[26] the United States District Court for the Northern District of Ohio reached the unprecedented conclusion that CERCLA section 107 imposes retroactive liability on hazardous waste transporters.[27]

After examining section 107, the *Georgeoff* court concluded the statutory language was too ambiguous to conclusively decide the retroactivity issue and, therefore, turned to the legislative history.[28] Relying on congressional statements, the court reasoned that section 107(a) placed retroactive liability on transporters.[29] The court stated that the imposition of retroactive liability was consistent with and necessary to effectuate congressional intent.[30] The court, however, did not address the constitutional issue of whether retroactive application violates due process.

In *United States v. Northeastern Pharmaceutical and Chemical Co., Inc. (NEPACCO)*[31] the United States District Court for the Western District of Missouri held that retroactive application of sections 106 and 107 did not violate due process rights under the fifth amendment.[32] The court relied on *Georgeoff* to determine that CERCLA operates to

26. 562 F. Supp. 1300 (N.D. Ohio 1983).

27. The *Georgeoff* holding is limited to transporters of waste materials. In *Georgeoff*, the State of Ohio and the United States Justice Department brought suit against Browning-Ferris Industries (BFI) for the costs related to the cleanup of a dumpsite. From 1975 to 1976, BFI transported chemical wastes to the dumpsite. BFI asserted that the liability provisions of CERCLA, including § 107(a), do not impose retroactive liability for acts of transporters occurring before the enactment of CERCLA.

28. 562 F. Supp. at 1309-11.

29. *Id.* at 1314. *See* 126 CONG. REC. S24,971, S14,973, S14,977, S15,003, S15,007 (1980); 126 CONG. REC. H11,793 (1980).

30. 562 F. Supp. at 1313-14.

31. 579 F. Supp. 823 (W.D. Mo. 1983).

32. *See supra* note 5 for pertinent text of the fifth amendment. In *NEPACCO*, the United States sought injunctive relief and reimbursement of all costs it had incurred in performing remedial and removal actions at a waste disposal site in Missouri. The complaint was filed against the waste generator, the waste disposal operators, and the waste transporters. 579 F. Supp. at 827. In 1971, NEPACCO had placed waste products in

assign liability retroactively. In addition to reaffirming the *Georgeoff* court's interpretation of congressional intent, the *NEPACCO* court determined that sections 104 and 106(a) apply retroactively.[33]

The *NEPACCO* court relied extensively on *Usery v. Turner Elkhorn Mining Co.*[34] in its due process analysis of the retroactive application of sections 106 and 107. The *NEPACCO* court applied the *Turner* "rational basis" test and concluded that CERCLA's imposition of liability for past acts is rational and satisfies due process.[35] Although the court utilized the rational basis test, it did not discuss the means-end link required under that standard.

The substantive due process test,[36] applicable to social and economic

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drums and buried them in a trench. The hazardous contaminants subsequently leaked into the ground water below. *Id.* at 833.

33. *Id.* at 839. After reviewing CERCLA's legislative history, the court concluded that Congress intended §§ 104 and 107(a) to apply retroactively. In support of its position, the court cited United States v. Waste Industries, 556 F. Supp. 1301, 1316-17 (D.N.C. 1982), *rev'd*, 734 F.2d 159 (4th Cir. 1984), and United States v. Wade, 546 F. Supp. 785, 792-93 (E.D. Pa. 1982). Furthermore, the court found that § 106(a) applies to inactive sites, and that the same persons listed as liability targets under § 107(a) could be liable under § 106(a). 579 F. Supp. at 839.

34. 428 U.S. 1 (1976). In *Turner*, the Court upheld a statute that imposed liability on coal industry employers to compensate former employees for disabilities resulting from black lung disease. The employers argued that the statute violated the due process clause because it obligated them to compensate employees who had terminated their employment prior to the effective date of the enactment. *Id.* at 14-15.

According to the *Turner* court, a due process challenge to a retroactive statute will be successful only when the parties complaining of the violation can establish that the legislature acted in an arbitrary and irrational way. *Id.* at 18.

35. 579 F. Supp. at 841. The rational basis test requires a rational means to achieve a legitimate end. Congress intended to have both past and present chemical producers pay for costs of cleaning up inactive waste sites. Congress considered the imposition of liability for past disposal practices as a means of spreading the cost of cleanup among those who created and profited from the waste disposal. 579 F. Supp. at 840-41. *See also* United States v. South Carolina Recycling & Disposal, Inc., 20 Env't Rep. Cas. 1753 (D.S.C. 1984).

36. The modern Court has almost completely withdrawn from reviewing state legislative economic regulation for substantive due process violations. Not since 1937 has the Court struck down an economic regulation on due process grounds. W. LOCKHART, Y. KAMISAR & J. CHOPER, CONSTITUTIONAL LAW: CASES, COMMENTS, QUESTIONS 449 (5th ed. 1980). Under the substantive due process test, if the legislative objective falls within the state's police power (broadly defined to include virtually any health, safety, or general welfare goal), all the Court requires is that there be a rational relation between the means chosen and the end sought. *See* Williamson v. Lee Optical Co., 348 U.S. 483 (1955) (state statute was a rational health measure; the court hypothesized reasons in support of the legislature's actions and determined that those reasons were rationally related to the health objective).

legislation since the 1930's, requires that the challenged law have a rational relation to a legitimate governmental objective.[37] The law need not be logically consistent in every respect with its aims in order to be constitutional. If an evil is subject to correction and the particular legislative measure is a rational way of correcting it, the law will be upheld.[38] A statute that has no reasonable relation to the public health, safety, morals, or general welfare is considered arbitrary and unreasonable and, therefore, violates the fifth amendment's due process clause.[39] If a regulation is reasonable in relation to its objective, however, and adopted in the interests of the community, it does not violate substantive due process.[40]

The establishment of a comprehensive response and liability mechanism to control and cleanup releases of hazardous substances into the environment is clearly a legitimate government goal. CERCLA's implementation of the cleanup mechanism has a substantial relation to the public health, safety, and general welfare.[41] Eliciting compensation for costs incurred in responding to substance releases and imposing liability to pay for future cleanups are rational means of achieving CERCLA's objective.

The liability provisions of CERCLA satisfy due process because they are rational means to a legitimate end. Imposing liability on the industries or persons who have directly benefited from inexpensive, inadequate disposal practices, and who have generated the wastes, is entirely appropriate and fair. It would be less rational and fair to force the general taxpayer to bear the financial responsibility for remedial measures. The most rational mechanism for spreading the cost of cleanup is to tax equally all industrial sectors generating the hazardous sub-

37. *Williamson*, 348 U.S. at 491 (prohibition of eye examinations in retail stores rationally related to the objective of freeing optometrists from the temptations of commercialism); Nebbia v. New York, 291 U.S. 502, 529-37 (1934) (price controls of milk rationally related to the objectives of protecting consumers and industry, and preventing waste).

38. *Williamson*, 348 U.S. at 487-88. In other words, the fit between the means and the ends can be fairly loose and still satisfy substantive due process. *See also* Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59 (1978) (presumption of constitutionality unless the legislature acts in an arbitrary or irrational manner).

39. Euclid v. Ambler Realty Co., 272 U.S. 365, 395 (1926); *see also* Moore v. City of East Cleveland, 431 U.S. 494 (1977); United States v. Carolene Products Co., 304 U.S. 144 (1938) (the rational basis test is used under both the fifth and fourteenth amendments' due process clauses).

40. West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937).

41. *See Euclid*, 272 U.S. at 395. *See also supra* note 10.

stances and pass the remaining expense (that which cannot be compensated out of the superfund) on to those persons actually responsible.[42]

The liability provisions in CERCLA are reasonable methods for effectuating cleanups because Congress attempted to moderate the impact of the liability imposed.[43] In examining section 107, it is clear that Congress provided for limitations on a waste contributor's potential liability. The strict liability imposed under section 107 is subject to the defenses of acts of God, acts of war, and certain acts or omissions of third parties.[44] There are also limitations on liability set forth in section 107(c).[45] Section 107(e)(1)(2) maintains the waste generators' right to seek indemnification from the transporter[46] in a separate cause of action.[47]

V. CONCLUSION

Although the language of CERCLA does not explicitly validate

42. *See Administration Testimony Before the Subcomm. on Environmental Pollution and Resource Protection of the Senate Comm. on Environment and Public Works*, 96th Cong., 2d Sess. 229 (1980) (statement of Thomas Jorling, Ass't Administrator, Water and Waste Mgt., EPA). *See generally* Blaymore, *Retroactive Application of Superfund: Can Old Dogs Be Taught New Tricks*, 12 B.C. ENVTL. AFF. L. REV. 1, 32-33 (1985).

43. The fact that CERCLA imposes liability only if the polluter has some connection with the creation, disposal, or transportation of a hazardous substance (§ 107(a)), and provides for less than complete liability if the polluter can prove *pro rata* involvement in a divisible harm (§ 107(e)), demonstrates that the means employed are rational. *See infra* notes 44-47 and accompanying text. By imposing liability on the responsible party, the legislative means become rationally related to CERCLA's objective.

44. 42 U.S.C. § 9607(b). *See also* United States v. Reilly Tar & Chem. Corp., 546 F. Supp. 1100 (D. Minn. 1982).

45. 42 U.S.C. § 9607(c). The limitations do not apply when the polluter fails to cooperate in the cleanup efforts, if knowing violation of certain regulations is the principal cause of the pollution, or if willful negligence or misconduct occurs.

46. " '[T]ransport' or 'transportation' means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term 'transport' or 'transportation' shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance." 42 U.S.C. § 9601(26).

47. 42 U.S.C. § 9607(e)(1)(2). One federal court ruled that users of a hazardous waste disposal site are jointly and severally liable to the government for reimbursement of the cleanup expenses unless the defendant can prove that the damage is divisible and that it is responsible only for part of that damage. United States v. Chem-Dyne Corp., 572 F. Supp. 802 (S.D. Ohio 1983). *See also* Blaymore, *supra* note 42, at 33-34.

holding responsible parties liable for acts committed before enactment, the legislative history demonstrates that Congress intended to force responsible parties to pay for their actions.[48] This pervasive interest could logically extend to response costs, and at least one court has so held.[49] Reimbursement for response costs incurred by the government prior to the enactment of CERCLA and retroactive imposition of liability satisfies the due process clause. The control and cleanup of releases of hazardous substances into the environment is a legitimate governmental objective. The liability provisions of CERCLA are a rational means of attaining that end because it is fair to place liability on those who benefit from the creation of the hazardous waste.[50] In addition, the liability provisions moderate the impact on those persons charged,[51] and the means employed are not arbitrarily formulated.

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48. *See supra* notes 10, 19, 29-30, 33 and accompanying texts.
49. *See supra* notes 13-25 and accompanying text.
50. *See supra* note 42 and accompanying text.
51. *See supra* notes 43-47 and accompanying text.