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# Redefining CERCLA Arranger Liability: Making the Responsible Party Pay

## *United States v. TIC Investment Corporation*<sup>1</sup>

by Marc D. Poston

### I. INTRODUCTION

The United States Environmental Protection Agency reports that 73 million Americans live within four miles of a site that is contaminated with hazardous substances.<sup>2</sup> The health, safety, and environmental risks posed by these sites prompted a public outcry to remedy this problem. By enacting the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), Congress required those responsible for the contamination to pay the costs of remediation.<sup>3</sup> This has raised questions concerning the applicability of CERCLA (also known as Superfund) against corporate officers and parent corporations, parties which have traditionally been protected from tort liability. Until the decision in *United States v. TIC Investment Corporation* (TICI), courts have failed to establish a standard for determining liability against officers and parent

corporations that arrange for the disposal of hazardous substances.

### II. FACTS AND HOLDING

In 1971, White Farm Equipment Company (WFE) became the owner and operator of a "farm implement manufacturing plant in Charles City, Iowa."<sup>4</sup> Hazardous waste generated at the plant was disposed of at a dumpsite owned by H.E. Construction Company (HEC).<sup>5</sup> HEC transported the waste to the dumpsite in accordance to an agreement with WFE.<sup>6</sup>

In 1980, TICI purchased WFE. TICI owned WFE for only one year, when TIC United Corporation (TICU), purchased the company. Although TICI and TICU were the new owners of WFE, disposal practices continued through 1985.<sup>7</sup> Throughout this period, Stratton Georgoulis was the sole shareholder, president, and chairman of the board of both TICI and

TICU.<sup>8</sup> Georgoulis also acted as the chairman of the board for WFE and served as president of WFE during part of this time.<sup>9</sup> Georgoulis was also president and chairman of the board of TIC Services, a subsidiary of TICI which provided services to TICI and TICU including "insurance, accounting, legal and tax work, and payment of employee salaries."<sup>10</sup>

It is believed that during this five-year period, neither Georgoulis nor any employee of TIC entities (TICI, TICU, and TIC Services) was involved in or had knowledge of the hazardous waste disposal practices of WFE.<sup>11</sup> However, Georgoulis did exert direct control over much of WFE's operations and management.<sup>12</sup> Georgoulis frequented the WFE corporate offices and spoke daily with WFE officers.<sup>13</sup> He also was involved in most of the personnel matters and had final authority over the hiring of WFE employees.<sup>14</sup> Furthermore, Georgoulis personally made a decision to "close and consolidate some of WFE's operations."<sup>15</sup> As chairman of WFE's two-member board of directors, Georgoulis took part in most of the corporate decisions.<sup>16</sup>

During TIC's ownership of WFE, TICI and TICU also exercised control over the operations of WFE.<sup>17</sup> TICI and TICU management made many personnel decisions at WFE.<sup>18</sup> In addition, TIC Services had a hand in WFE operations, including paying WFE salaries and billing WFE for

<sup>1</sup> 68 F.3d 1082 (8th Cir. 1995).

<sup>2</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, SUPERFUND ADMINISTRATIONS REFORMS FACT SHEET (May 25, 1995).

<sup>3</sup> 42 U.S.C. § 9607 (1980).

<sup>4</sup> *TIC Investment*, 68 F.3d at 1084.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *TIC Investment*, 68 F.3d at 1084.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1085.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

reimbursement.<sup>19</sup>

In 1983, WFE refinanced and was required to increase its board of directors from two to five members.<sup>20</sup> Georgoulis remained chairman of the board following this change.<sup>21</sup> WFE defaulted on the refinancing loan in 1985 and was subsequently sold to Allied Products Corporation.<sup>22</sup> In 1988, the United States Environmental Protection Agency (EPA) listed the HEC dumpsite on its National Priorities List, and soon thereafter began site remediation.<sup>23</sup> Both the EPA and Allied provided response costs for this remediation and brought individual cost recovery actions against the defendants for the hazardous waste contributed by WFE.<sup>24</sup>

Georgoulis argued that CERCLA arranger liability does not apply to corporate officers and directors, "without proof of any intentional participation in the arrangement for disposal of the hazardous substance."<sup>25</sup> TICl made the same argument for parent corporation liability, arguing that "intentional participation in the arrangement for disposal" of hazardous waste is required before arranger liability for parent corporations can be found under CERCLA.<sup>26</sup>

The case was heard before the United States District Court for the Northern District of Iowa.<sup>27</sup> The District Court found in favor of Allied and the EPA, and entered partial summary judgment against TICl

and Georgoulis, holding the defendants directly liable, under CERCLA, as arrangers for the disposal of hazardous waste.<sup>28</sup>

The United States Court of Appeals for the Eighth Circuit affirmed the district court's holding in part and reversed in part.<sup>29</sup> According to the court of Appeals, CERCLA imposes arranger liability against corporate officers, directors, and parent corporations where that entity had "the authority to control and did in fact exercise actual or substantial control, directly or indirectly, over the arrangement for disposal, or the off-site disposal, of hazardous substances."<sup>30</sup>

### III. LEGAL HISTORY

#### A. Congress Enacts CERCLA

By the late 1970's, it was clear to Congress that the United States was dotted with hazardous waste disposal sites in need of cleaning. The serious environmental and health related risks posed by these sites inspired the enactment of CERCLA in 1980. CERCLA lists four categories of parties that may be held responsible for the response costs associated with the remediation of a particular Superfund site. Those persons are: 1) the current owner or operator of the facility; 2) the past owner or operator of the facility; 3) the person responsible for arranging the disposal or treatment of the hazardous waste; and 4) the transporter of the hazardous waste.<sup>31</sup> "Persons," as

defined in CERCLA, includes both individuals and corporations.<sup>32</sup>

Liability under CERCLA is governed by §107 of the statute. Most statutes operate prospectively. CERCLA, however, was enacted for the express purpose of addressing hazards caused by past waste disposal practices. Consequently, it has been held to apply retroactively. In addition, CERCLA has been interpreted to impose strict liability, liability without fault.<sup>33</sup> Furthermore, most court cases have held that CERCLA imposes joint and several liability, meaning that any party found responsible for cleanup at the site can be liable for the entire cost of remediation regardless of how little they contributed.<sup>34</sup> While each of the four categories of parties that may be held responsible for response costs under CERCLA appear to be treated equally in the statute, courts have varied the standards used and the liability imposed for each group. The liability imposed on individual officers of parent corporations have subsumed considerable litigation and debate.

#### B. Officer Liability

Corporations were conceived for the primary purpose of limiting the liability of officers and shareholders.<sup>35</sup> A corporation is a legal entity separate from its owners and officers.<sup>36</sup> Shareholder liability, therefore, is limited by the amount of

<sup>19</sup> *Id.*

<sup>20</sup> *TIC Investment*, 68 F.3d at 1085.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1084.

<sup>26</sup> *Id.*

<sup>27</sup> *TIC Investment*, 68 F.3d at 1083.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 1084.

<sup>30</sup> *Id.* at 1087.

<sup>31</sup> 42 U.S.C. § 9607(a).

<sup>32</sup> 42 U.S.C. § 9601(21) (1980).

<sup>33</sup> Lynda J. Oswald & Cindy A. Schipani, *CERCLA and the "Erosion" of Traditional Corporate Law Doctrine*, 86 Nw. U.L. Rev. 259, 265 (1992). 42 U.S.C. § 9601(32) states "[t]he term 'liable' or 'liability' under this subchapter shall be construed to be the standard of liability which obtains under section 1321 of Title 33." This is referring to the Clean Water Act which has been held to impose strict liability upon violators of the Act.

<sup>34</sup> Oswald & Schipani, *supra* note 33, at 265.

<sup>35</sup> *Id.* at 262.

<sup>36</sup> *Id.* at n 13.

the individual shareholder's investment in the corporation.<sup>37</sup> Officers also are protected from corporate actions.<sup>38</sup> This corporate veil is necessary to encourage commerce and free enterprise by protecting corporate officers and shareholders from some of the risks associated with business ventures.<sup>39</sup>

This protection, however, is not absolute. Officer that consent to or personally participate "in the tortious or illegal acts of the corporation are not afforded protection under this traditional corporate law doctrine."<sup>40</sup> There must be actual participation on the part of the officer "through affirmative actions of direction, sanction, or cooperation in the wrongful acts of commission or omission."<sup>41</sup> Merely being an officer, as such, is insufficient to create liability.<sup>42</sup>

Courts consistently have found officer liability under CERCLA since its enactment in 1980. Three separate theories have been developed to address this issue.<sup>43</sup> All three theories require a level of personal involvement in the tortious acts, although each seeks this involvement in a different manner.

The first of these theories is the "personal participation" theory.<sup>44</sup> This theory is best represented in *U.S. v. Northeastern Pharmaceutical & Chemical Co., Inc. (NEPACCO)*.<sup>45</sup> In *NEPACCO*,

the corporate officer in question was actually involved in the disposal practices, but argued to the Eighth Circuit that there should be no personal liability "because he acted solely as a corporate officer or employee."<sup>46</sup> The court opined that the officer was not being held liable because of his position with *NEPACCO*, rather he was "individually liable... because he personally arranged for the transportation and disposal of hazardous substances."<sup>47</sup> The court, citing *Donsco, Inc. v. Casper Corp.*, stated "[a] corporate officer is individually liable for the torts he [or she] personally commits [on behalf of the corporation] and cannot shield himself [or herself] behind a corporation when he [or she] is an actual participant in the tort."<sup>48</sup>

Two rationales have been used by courts in applying the personal participation theory.<sup>49</sup> Both the traditional corporate law doctrine and a reading of the statutory language of CERCLA have been cited.<sup>50</sup> The underlying principle of the personal participation theory, however, follows more closely with the traditional corporate law doctrine, holding officers liable for environmental torts in the same manner that they would be held liable for other torts in which they have personally participated.<sup>51</sup>

The second theory used in addressing corporate officer liability is the "control

theory."<sup>52</sup> This theory "focus[es] more upon the officer's authority or ability to direct corporate activities than upon the officer's actual involvement in the unlawful activity."<sup>53</sup> While this theory was originally devised to hold an "operator" liable, *NEPACCO* expanded the theory to include liability against arrangers.<sup>54</sup> The court in *NEPACCO* stated that "[i]t is the authority to control" hazardous waste disposal that is "critical under the statutory scheme."<sup>55</sup>

Since *NEPACCO*, the control theory has been somewhat refined in the Eighth Circuit while remaining unchanged in other circuits. The Eighth Circuit in *U.S. v. Vertac Chemical Corporation*,<sup>56</sup> claimed the control theory alone was too "broad [an] interpretation" of *NEPACCO*, and held that the mere authority to control was not adequate to find liability as an arranger.<sup>57</sup> In *U.S. v. Gurley*,<sup>58</sup> the court also found this standard too broad, but in the context of operator liability, not arranger liability, requiring "some type of action or affirmative conduct" to equate control of an operation.<sup>59</sup> It is, therefore, still questionable how the control theory will be applied to arrangers under CERCLA.

The last theory of officer liability under CERCLA is the "prevention theory."<sup>60</sup>

<sup>37</sup> *Id.*

<sup>38</sup> Lynda J. Oswald, *Strict Liability of Individuals Under CERCLA: A Normative Analysis*, 20 B.C. ENVTL. AFF. L. REV. 579, n. 8 (1993).

<sup>39</sup> Oswald & Schipani, *supra* note 33, at 262.

<sup>40</sup> Oswald, *supra* note 41. The corporation can also be held liable for the tortious acts of its officers under the doctrine of respondeat superior. *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Oswald & Schipani, *supra* note 33, at 272-73.

<sup>44</sup> *Id.* at 273, 275.

<sup>45</sup> 810 F.2d 726 (8th Cir. 1986).

<sup>46</sup> *Id.* at 744.

<sup>47</sup> *Id.*

<sup>48</sup> *NEPACCO*, 810 F.2d at 744 (citing *Donsco, Inc. v. Casper Corp.*, 587 F.2d 602, 606 (3d Cir. 1978)).

<sup>49</sup> Oswald & Schipani, *supra* note 33, at 279-80.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 282.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 283.

<sup>54</sup> *NEPACCO*, 810 F.2d at 744.

<sup>55</sup> *Id.*

<sup>56</sup> 46 F.3d 803 (8th Cir. 1995).

<sup>57</sup> *Id.* at 811.

<sup>58</sup> 43 F.3d 1188, 1193 (8th Cir. 1994).

<sup>59</sup> *Id.*

This theory has had little effect upon CERCLA cases and has not surfaced in the Eighth Circuit. Where applied, courts appear to focus on an officer's "ability to prevent harm from improper waste activities."<sup>61</sup> Officer's that attempt to prevent improper disposal practices will be treated more lenient by courts in assessing liability, thus creating an "incentive" for officers to practice proper waste handling procedures.<sup>62</sup>

## C. Parent Corporation Liability

The history of parent corporation liability under CERCLA can be traced to cases dealing with operator liability. These cases adopt three different tests; an "actual control test", an "authority-to-control test", and a piercing the corporate veil test.<sup>63</sup> The actual control test was used by the First Circuit in *U.S. v. Kayser-Roth Corp., Inc.*<sup>64</sup> The court held that mere ownership and an ability to control was insufficient to impose operator liability.<sup>65</sup> At a minimum, the court stated, an "active involvement in the activities of the subsidiary" is required.<sup>66</sup>

The second test, the authority-to-control test, is a less stringent minority view that only requires a "capability to control."<sup>67</sup> The Fourth Circuit adopted this test in *Nurad, Inc. v. William E. Hooper & Sons*

*Co.*,<sup>68</sup> finding operator liability where actual control was not exercised. Here, the mere existence of an authority to control was sufficient for liability.<sup>69</sup>

The third test, which is also a minority view, finds liability only if the court can reach the parent corporation by piercing the corporate veil.<sup>70</sup> The first appellate court to apply this test was the Fifth Circuit in *Joslyn Manufacturing Co. v. T.L. James & Co., Inc.*,<sup>71</sup> which held that the parent corporation must control the subservient corporation to an extent that it does not act on its own interests, but operates solely to benefit the parent corporation.<sup>72</sup>

Again, these cases have dealt with operator liability and have not addressed arranger liability for parent corporations. Furthermore, the treatment of parent corporation liability under CERCLA in general has yet to be decided by most courts. The Eighth Circuit in *TIC* addressed the issue of arranger liability for both parent corporations and corporate officers as a matter of first impression.<sup>73</sup>

## IV. INSTANT DECISION

The Eighth Circuit Court in *TIC* began their analysis by categorizing the defendant's liability, indicating that they were deciding the issue of arranger liability as a matter of first impression.<sup>74</sup> First, the court addressed the issue of Georgoulis'

liability as an arranger.<sup>75</sup> Georgoulis argued that the appropriate standard for arranger liability is one of specific intent, noting that he had no knowledge of TIC's disposal activities and therefore lacked the intent necessary to find liability.<sup>76</sup> Georgoulis also claimed that according to the holding in *Gurley*, arranger liability can be found only where the defendant has the authority to control disposal practices, and exercises that authority over the disposal practices of the corporation.<sup>77</sup>

The Eighth Circuit rejected this argument. Looking at the legislative history of CERCLA for guidance, the court noted that Congress, first and foremost, wanted to make sure those persons responsible for the disposal of hazardous substances were the parties paying the site remediation costs.<sup>78</sup> The court also noted that Congress wished to prevent those responsible persons from avoiding liability by "closing their eyes" to disposal practices.<sup>79</sup>

Next, the court spent a considerable amount of time analyzing the decision in *Gurley*.<sup>80</sup> The defendants had argued that *Gurley* supported their claim against arranger liability, but the court turned that contention around and said that *Gurley* in fact supported arranger liability against Georgoulis.<sup>81</sup> The *Gurley* court had distinguished the individual in that case, a non-officer, non-director, non-shareholder

<sup>60</sup> Oswald & Schipani, *supra* note 33, at 291.

<sup>61</sup> Kurt A. Strassert & Denise Rodosevich, *Seeing the Forest for the Trees in CERCLA Liability*, 10 YALE J. ON REG. 493, 511 (1993).

<sup>62</sup> Oswald & Schipani, *supra* note 33, at 293-94.

<sup>63</sup> *Lansford-Coaldale Joint Water Authority v. Tonolli Corp.*, 4 F.3d 1209, 1221 (1993); *U.S. v. TIC Investment*, 68 F.3d 1082, 1091 (8th Cir. 1995).

<sup>64</sup> 910 F.2d 24, 27 (1st Cir. 1990).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Lansford-Coaldale*, 4 F.3d at 1221.

<sup>68</sup> 966 F.2d 837, 842 (4th Cir. 1992).

<sup>69</sup> *Id.*

<sup>70</sup> *U.S. v. TIC Investment*, 68 F.3d 1082, 1091 (8th Cir. 1995).

<sup>71</sup> 893 F.2d 80 (5th Cir. 1990).

<sup>72</sup> *Id.* at 83-84.

<sup>73</sup> *U.S. v. TIC Investment*, 68 F.3d 1082, 1096 (8th Cir. 1995).

<sup>74</sup> *Id.* at 1085-86.

<sup>75</sup> *Id.* at 1086.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 1087.

<sup>78</sup> *Id.* at 1088.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 1088-89.

<sup>81</sup> *Id.*

employee, from an individual holding a position as officer, director, or shareholder, stating "officers, directors, or shareholders are more likely to cause a company to dispose of hazardous waste."<sup>82</sup> The court in *TIC* agreed with that statement, noting that such a policy is expressly aimed at closing "loophole[s] for powerful individuals like Georgoulis."<sup>83</sup> The court stated that allowing individuals with "virtually unlimited" control over a corporation to escape liability by shutting their eyes to the corporation's disposal practices would be unjust, particularly since an employee with limited decision-making authority could still be held liable as an arranger.<sup>84</sup> Again, the court maintained the policy justification that the goal of CERCLA is to "place the ultimate responsibility for clean up on those responsible."<sup>85</sup> The court also agreed with a point raised by the United States that a specific intent standard would protect individuals who control the "day-to-day... budgets, production, and capital investment," but fail to consider the "cost-cutting disposal practices" of the corporation.<sup>86</sup> The standard conceived by the Eighth Circuit in *TIC* imposes CERCLA arranger liability upon a "corporate officer or director if he or she had the authority to control and did in fact exercise actual or substantial control, directly or indirectly, over the arrangement for disposal, or the off-site disposal, of hazardous substances."<sup>87</sup> Such a

standard, claimed the court, dispels the defendant's argument that every chief officer with authority will automatically be liable as an arranger.<sup>88</sup> In applying this standard, the court held that a "fact-intensive examination of the totality of the circumstances" must be conducted.<sup>89</sup>

The court accordingly applied such an examination to the facts of *TIC*.<sup>90</sup> The control that Georgoulis exerted over WFE, the court found, did not allow others to have any authority over corporate decisions, including decisions concerning the disposal of hazardous substances.<sup>91</sup> While the court's decision stated that Georgoulis would have avoided liability had he delegated decision-making authority among corporate employees, such a delegation did not take place.<sup>92</sup> Instead, the court found that Georgoulis controlled "virtually every aspect of WFE's operations" and that it was "therefore beyond genuine dispute that he exercised substantial indirect control over the disposal arrangement."<sup>93</sup> In the end, the court held that there was sufficient evidence to establish arranger liability against Georgoulis.<sup>94</sup>

Having settled the issue of corporate officer liability, the court turned to the issue of parent corporation liability against *TICI* and *TICU*.<sup>95</sup> Here the court simply applied the same standard discussed above for officer liability.<sup>96</sup> They held that arranger liability can be found

against "a parent corporation if the parent had the authority to control and exercised actual or substantial control, directly or indirectly, over the arrangement for disposal, or the off-site disposal, of the subsidiary's hazardous substances."<sup>97</sup>

The same "fact-intensive inquiry" utilized against Georgoulis was used against *TICI* and *TICU* to determine if there was sufficient evidence to support a finding of parent corporation liability.<sup>98</sup> In this instance, however, the court held the facts were not sufficient to warrant summary judgment, and reversed the judgment of the district court.<sup>99</sup>

## V. COMMENT

Since its enactment in 1978, CERCLA has been criticized by commentators. Many claim the lame-duck session of Congress that enacted CERCLA left the language of the statute too vague and open for judicial interpretation.<sup>100</sup> This vagueness, they claim, has led to an erosion of the traditional corporate law doctrine. Although it is inevitable that *TIC* will be looked upon by these commentators as furthering that erosion, such an interpretation would be incorrect.

The debate as to whether CERCLA liability should extend to officers and parent corporations is really one of competing public policies. On one side stand those in support of a more extensive liability scheme, desiring a cleaner environment that will ultimately protect the health

<sup>82</sup> *Id.* at 1089.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 1090.

<sup>89</sup> *Id.* at 1090.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 1091.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 1092.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 1092-93.

<sup>100</sup> ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY 288-89 (1992).

and safety of everyone, while on the other stand those who argue that corporate officers, directors, shareholders, and parent corporations should be protected from liability, erroneously maintaining that the formation of corporations will be discouraged, and the public interest in promoting commerce and free trade will be harmed. A thorough analysis of *TIC* shows how the court considered and dealt with both of these underlying policies

The traditional corporate law doctrine, as discussed, *supra*, protects corporate officers and parent corporations from liability unless there is actual participation on the part of the officer or parent corporation. The decision in *TIC* clearly does not depart from this principle. The court carefully set out the standard for arranger liability so as to protect officers and parent corporations from incurring liability based solely on their position within the corporation. *TIC* requires control, direct or indirect, over the disposal of hazardous substances before liability can be found. This can, in no way, however, be seen as an erosion of either CERCLA's liability scheme or traditional corporate law doctrine. Nowhere within the arranger provision of CERCLA is there any language limiting liability to only those who directly arrange for the disposal of hazardous substances and nowhere within the traditional corporate law doctrine is there a loophole for those officers and parent corporations who indirectly commit torts. Those responsible, either directly or indirectly, can be held liable whether under *TIC* or traditional corporate law.

Opponents of officer and parent corporation liability under CERCLA argue that past court decisions have held officers and parent corporations liable based on their mere position to the corporate PRP. That is, they claim courts do not

look at the actions of that officer or parent corporation, rather they simply find liability by determining whether the officer or parent corporation had the authority to control the disposal. This, however, is not an accurate representation of the decision in *TIC*; *TIC* created a standard that requires more. Not only does *TIC* prevent the mere authority to control from creating liability, but it calls for a fact-intensive inquiry to determine whether that level of control was "substantial." This protects the innocent officer or parent corporation that has delegated most of his or her authority and has retained little or no control over the disposal of the hazardous waste. It requires a court to look past mere titles by determining who had the authority to control, as well as who did control the disposal practices of the corporation. By finding this origin of control, courts will be able to better assess who is truly liable and responsible for the improper disposal.

Another argument opponents of officer and parent corporation liability pose is that protecting the corporate form will promote commerce and free trade. While this may be true as a general statement, it has no application in this context. If an officer or parent corporation alters its corporate activity for fear of arranger liability then CERCLA will have served the additional beneficial purpose of deterring harmful behavior. While CERCLA normally deters the acting arranger from mishandling hazardous waste, an extension of CERCLA liability to corporate officers and parent corporations would deter those who set policy, guide the decision making process, and make management decisions for the corporation from ever becoming arrangers. This will ultimately decrease the amount of hazardous waste entering Superfund sites. Besides acting as a general deterrent, Congress itself has stated that CERCLA liability would be

beneficial to the economy by encouraging the internalization of costs.<sup>101</sup> By requiring corporations to properly dispose of hazardous substances during production, the market price of goods will adequately reflect their production costs.<sup>102</sup> In addition, Congress has stressed that it will cost a corporation less to implement and utilize proper disposal practices than it will to pay Superfund remediation costs.<sup>103</sup>

It is clear that the court's holding in *TIC* is consistent with both the traditional purpose of CERCLA as a remedial statute and traditional corporate law doctrine. The liability scheme formulated in *TIC* will prevent responsible parties from escaping liability while equally protecting innocent parties from incurring liability. Since the enactment of CERCLA, the Eighth Circuit is the first to adopt a solid standard for arranger liability that effectively employs both these policies. Although *TIC* refers specifically to corporate officer and parent corporation liability, this standard could easily be expanded to encompass directors, shareholders, and most other PRP's that would potentially be liable as arrangers under CERCLA.

## VI. CONCLUSION

Despite potentially competing public policies, it is overwhelmingly clear that the public desires to eliminate the health, safety, and environmental risks created at Superfund sites. Congress acknowledged this with the enactment of CERCLA, and the court in *TIC* reaffirmed this desire in its decision. The Eighth Circuit has finally settled the long overdue question of arranger liability. Hopefully, this decision will become the benchmark other jurisdictions will adopt in the future.

<sup>101</sup> Michael P. Healy, *Direct Liability for Hazardous Substance Cleanups Under CERCLA: A Comprehensive Approach*, 42 Case W. Res. 65, 79-80 (1992) (citing S. Rep. No. 848, 96th Cong., 2d Sess. 8-10 (1980)).

<sup>102</sup> *Id.* at 80.

<sup>103</sup> *Id.*