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I. Introduction

Despite the scant legislative history surrounding the enactment of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"),\(^1\) it is clear that Congress intended that parties who create environmental problems should shoulder the financial responsibility of cleanups.\(^2\) However, apportioning CERCLA liability is becoming increasingly difficult in the corporate arena, especially in the event of a liquidation or when one company purchases the assets of another.\(^3\) Although CERCLA defines "re-

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3. Generally speaking, a company which purchases another company's assets is not liable for the seller's liabilities. Dayton v. Peck, Stow & Wilcox Co., 739 F.2d 690, 692 (1st Cir. 1984) (citing Asarco, Inc. v. Bay State Harness Horse Racing and Breeding Ass'n, 437 F. Supp. 1083, 1089 (D. Mass. 1977)). However, there are four recognized exceptions to this rule:

1) When the purchasing corporation expressly or impliedly agreed to assume the selling corporation's liability;
2) when the transaction amounts to a consolidation or merger of the corporations;
3) when the purchaser corporation is merely a continuance of the seller corporation; or
4) when the transaction is entered into fraudulently to escape liability for such obligations.

sponsible parties," those liable for cleanup, the statute is "silent regarding liability of successor corporations." As a result, corporations have attempted to resolve liability issues contractually by indemnification or release agreements.

4. "Responsible parties" are liable for: cleanup costs incurred by the government, damages, the costs of any studies implemented, and response costs incurred by any other parties. CERCLA § 107(a), 42 U.S.C. § 9607(a). CERCLA defines "responsible parties" as:

1. The owner and operator of a vessel or a facility,
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,
3. Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity . . . and
4. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities . . . from which there is a release, or a threatened release which causes the incurrence of response costs . . . .

Id. For a further discussion of liability of potentially responsible parties ("PRPs"), see infra notes 83-84 and accompanying text.


6. CERCLA does not prohibit transferring liability by contract. See CERCLA § 107(e)(1), 42 U.S.C. § 9607(e)(1) ("Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section"). Any person or entity, potentially liable under CERCLA may enter into a contractual release of liability. Southland Corp. v. Ashland Oil, 696 F. Supp. 994, 1000 (D.N.J. 1988); FMC Corp. v. Northern Pump Co., 668 F. Supp. 1285, 1289 (D. Minn. 1987). Such contractual arrangements have been described as "tangential" to the enforcement of CERCLA. Mardan Corp. v. C.G.C. Music, Ltd., 804 F.2d 1454, 1459 (9th Cir. 1986). See also Thaddeus Bereday, Note, Contractual Transfers of Liability under CERCLA Section 107(e)(1): For Enforcement of Private Risk Allocations in Real Property Transactions, 43 Case W. Res. L. Rev. 161, 203-04 (1992) (arguing that second part of CERCLA § 107(e) impliedly authorizes risk allocation agreements between parties). See generally Brian O. Dolan, Misconceptions of Contractual Indemnification Against CERCLA Liability: Judicial Abrogation of the Freedom to Contract, 42 Cath. U. L. Rev. 179 (1992) (discussing judicial inclination to hold that PRP may indemnify another PRP for CERCLA costs).

7. Bereday, supra note 6 at 164 n.6. While both indemnifications and releases purport to transfer liability, there are differences in form between the two. With
Judicial inconsistency, however, continues to impede these agreements. Most courts, reluctant to fashion a uniform federal rule, have continued to apply state common law to interpret these contracts.\(^8\) While some courts espouse the view that any broad and general release of future liabilities effects a transfer of CERCLA costs,\(^9\) other courts have demanded language specifically referring to "CERCLA-like" liabilities to transfer liability.\(^10\)

This Note explores the issue of contractually transferring CERCLA liability in the context of the recent decision by the United States Court of Appeals for the First Circuit in *John S. Boyd Co., Inc. v. Boston Gas Co.*\(^11\) In interpreting the contract at issue, the court applied Massachusetts law.\(^12\) The court determined that the agreement did not transfer CERCLA liability because the language did not provide for a general release, nor for transfer of future liability.\(^13\) This Note suggests that a case-by-case approach under state law offers little predictability as to which parties must pay CERCLA cleanup costs.

Part II of this Note gives an overview of the cases supporting the broad language theory of contract interpretation as well as those advocating an express language requirement to transfer CERCLA liability. Part III explains the factual scenario of *Boston Gas*, an indemnity, one party assumes the burden of paying future costs that may accrue to the other party. *See id.* A release is a surrender of a cause of action by a party that may have a viable claim. *Id.* at 165 n.9. Put simply, indemnification is affirmative risk-shifting whereas release is defensive risk-shielding. *Id.* at 194.


9. *See, e.g.*, Marden, 804 F.2d at 1462 (concluding that broad language of agreement, encompassing liability for any claims, includes future CERCLA claims). For further discussion of the *Marden* holding, see *infra* note 14-21 and accompanying text.


11. 992 F.2d 401 (1st Cir. 1993).

12. *Id.* at 406. For a discussion of the court's reasoning in applying state law, see *infra* notes 93-94 and accompanying text.

and describes the First Circuit's reasoning in that decision. Part IV analyzes the decision by focusing on CERCLA's objectives, the various federal and state interests involved, and the intentions of the contracting parties. Finally, Part V examines the repercussions of this decision and advocates the development of a federal common law rule.

II. BACKGROUND

A. Applying State Contract Law: The Broad Language Approach

_Mardan Corp. v. C.G.C. Music, Ltd._14 is the seminal case espousing the broad language approach. This approach requires all-encompassing language in an agreement that is intended to transfer CERCLA liability.15 In _Mardan_, the parties executed a settlement agreement and general release and receipt after Mardan purchased the assets of Macmillan, a company that manufactured musical instruments.16 However, when the Environmental Protection Agency (“EPA”) ordered Mardan to pay cleanup costs for a contaminated settling pond, Mardan sued Macmillan under CERCLA to recoup its cleanup expenses.17

In _Mardan_, the Ninth Circuit determined that even though a federal statute was at issue, the district court correctly applied state contract law.18 In so doing, the court found that forging a uniform

14. 804 F.2d 1454 (9th Cir. 1986).
15. Rodenbeck v. Marathon Petroleum Co., 742 F. Supp. 1448, For example, in Rodenbeck, Marathon was released “from all claims and obligations of any character or nature whatsoever . . . .” Rodenbeck, 742 F. Supp. at 1457. The court held that the broad language of the release included release from CERCLA liability. Id. For a further discussion of the Rodenbeck decision, see infra notes 26-30 and accompanying text.
16. _Mardan_, 804 F.2d at 1456. Among the assets Mardan purchased from Macmillan was a musical instrument manufacturing plant in Nogales, Arizona. Id. at 1455. Prior to the sale, Macmillan manufactured instruments for ten years at the plant, depositing its wastes into a settling pond. Id. at 1456. Macmillan had informed the Environmental Protection Agency (“EPA”) about the hazardous waste pond, but EPA granted interim status for the settling pond. Id. In 1983, after the purchase by Mardan, EPA brought an enforcement action against Mardan for violation of the interim status requirements. Id.
17. Id. Under a consent agreement with EPA, Mardan promised to close the settling pond and install a groundwater monitoring system. Id. Mardan believed the cost of complying with the consent agreement could run as high as $1.5 million. Id. Mardan was unsuccessful in its action against Macmillan at the district court level. Id. at 1457. The district court awarded summary judgment to Macmillan in part because it found that Mardan’s CERCLA claim was precluded by the release. Id.
18. Id. at 1457. The court agreed with an amicus brief filed by the United States. Id. The brief argued that a "uniform federal rule should not be developed
body of law for interpreting CERCLA release contracts was not only unnecessary, but also would foster uncertainty in contractual relations.\textsuperscript{19} The court then examined the terms of the agreement, employing state law principles of contract interpretation.\textsuperscript{20} In construing the terms of the contract, the court concluded that the broad language of the release necessarily included a release of CERCLA liabilities.\textsuperscript{21}

In contrast, the dissent in \textit{Marden} argued that a uniform federal rule should be fashioned to require that any release of CERCLA liability through contractual provisions be express.\textsuperscript{22} According to the dissent, adoption of a federal rule in the CERCLA context is mandated both by congressional intent\textsuperscript{23} and by the \textit{United States v. Kimbell Foods}\textsuperscript{24} test, which outlines criteria for determining whether a federal rule should be created to preempt existing state law.\textsuperscript{25}

to govern the issue of whether and when agreements between private 'responsible parties' can settle disputes over contribution rights under section 107.\textsuperscript{19} \textit{Id.} at 1458.

\textsuperscript{19} \textit{Id.} at 1458-60. Recognizing that Congress did not clearly indicate whether a federal rule should be applied, the court used the three-pronged test articulated in United States v. Kimbell Foods, 440 U.S. 715 (1979). According to the test, a court must determine: "(1) \{W\}hether the issue requires 'a nationally uniform body of law'; (2) 'whether application of state law would frustrate specific objectives of the federal programs'; and (3) whether 'application of a federal rule would disrupt commercial relationships predicated on state law.'" \textit{Marden}, 804 F.2d at 1458 (quoting \textit{Kimbell Foods}, 440 U.S. at 728-29). Applying this test, the court concluded that a uniform rule was unnecessary since commercial entities interpret indemnity provisions under state law as a matter of course. \textit{Id.} Second, the court determined that applying of state law would not frustrate the purposes of CERCLA since indemnity or release agreements cannot eliminate liability to the government. \textit{Id.} at 1459. Finally, the court held that applying a federal rule would create confusion and uncertainty because buyers and sellers would not know which law governed their agreements. \textit{Id.} at 1460.

\textsuperscript{20} \textit{Marden}, 804 F.2d at 1460-61.

\textsuperscript{21} \textit{Id.} at 1462. The release absolved Macmillan of liability for any claims "'based upon, arising out of or in any way relating to the Purchase Agreement . . .'" \textit{Id.} (quoting settlement agreement). Additionally, the court considered extrinsic evidence in reaching its conclusion. \textit{Id.} It was undisputed that Marden knew that the settling pond was hazardous and knew that corrective action would be necessary in the future. \textit{Id.}

\textsuperscript{22} \textit{Id.} at 1463 (Reinhardt, J., dissenting).

\textsuperscript{23} \textit{Id.} (Reinhardt, J., dissenting). In reaching this conclusion, Judge Reinhardt, speaking for the dissent, analyzed the scant legislative history of CERCLA. \textit{Id.} Judge Reinhardt noted that Representative James Florio, CERCLA's House sponsor, suggested the need for uniformity under CERCLA. \textit{Id.} at 1464. Although Representative Florio's comments referred to CERCLA liability rather than CERCLA releases, Judge Reinhardt found that a uniform federal rule would advance congressional goals in both instances. \textit{Id.}

\textsuperscript{24} 440 U.S. 715 (1979).

\textsuperscript{25} \textit{Marden}, 804 F.2d at 1464 (Reinhardt, J., dissenting). For a discussion of the \textit{Kimbell Foods} test, see supra note 19. Judge Reinhardt maintained that
In *Rodenbeck v. Marathon Petroleum Co.*,26 the United States District Court for the Northern District of Indiana interpreted the language of two release agreements.27 The parties executed these agreements when the plaintiff lessors terminated their service station lease with the defendant lessee.28 Applying the broad language approach, the *Rodenbeck* court held that even though the contracts did not specifically refer to CERCLA liability, the general nature of the releases included future causes of action of any variety.29 Unlike the court in *Mardan*, however, this court did not first determine the propriety of establishing a federal rule regarding CERCLA releases.30

Similarly, the United States District Court for the Southern District of New York in *Olin Corp. v. Consolidated Aluminum Corp.*31 held that the broad language used in several sales agreements trans-

27. Id. at 1456. In December 1987, Rodenbeck and Marathon signed two agreements; one cancelled a service station lease and the other was an agreement for lease of real estate. Id. at 1453. The release stated that "'[e]ach party hereto expressly discharges and releases the other from all claims and obligations of any character or nature whatsoever arising out of or in connection with said agreements . . . .'" Id. (quoting "Release of Claims").
28. Id. at 1451. After the lease terminations, the plaintiffs received a purchase offer which required ground testing in accordance with EPA standards. *Id.* The test results indicated substantial soil contamination, and the matter was reported to the Massachusetts Department of Environmental Management ("DEM"). *Id.* After conducting further testing, DEM informed plaintiffs that a substantial cleanup would be required. *Id.* Plaintiffs then filed a complaint against Marathon for indemnification. *Id.* Marathon moved for summary judgment, contending that the release agreements entered into by the parties barred all claims against Marathon. *Id.* at 1452.
29. *Id.* at 1456-57 (construing contract language to mean that release from CERCLA liability was clearly included).
30. *Id.*
31. 807 F. Supp. 1133 (S.D.N.Y. 1992). This decision was affirmed by the Second Circuit at 62 U.S.L.W. 2209 (2d Cir. Oct. 12, 1993). The Second Circuit held that even though CERCLA was not in effect at the time of the agreement, the language of the agreement evinced a "clear and unmistakable intent" to release the seller from all liability, including unknown future liabilities. *Id.* In reaching its decision, the court weighed the equitable arguments of the parties. *Id.* The court acknowledged that the buyer's position was persuasive because it may have been an innocent purchaser. *Id.* However, the court noted that two sophisticated parties entered into the contract with the expectation that it would govern their relation-
ferred CERCLA liability to the purchasing entity.\textsuperscript{32} Pursuant to the agreements, Conalco purchased Olin's aluminum operations, including a site contaminated with polychlorinated biphenyls ("PCBs").\textsuperscript{33} In applying state contract law to the agreements, the court reiterated the points stressed by the \textit{Mardan} court.\textsuperscript{34} Specifically, the court applied the \textit{Kimbell Foods} test and found the development of a federal rule unwarranted because state contract law was sufficiently well-developed to provide an answer to the dispute.\textsuperscript{35}

In \textit{United States v. Hardage},\textsuperscript{36} the United States Court of Appeals for the Tenth Circuit advocated the broad language approach to interpreting indemnification agreements. In \textit{Hardage}, the government brought suit against thirty-seven defendants for the cleanup

\begin{itemize}
  \item \textsuperscript{32} \textit{Id.} at 1142. Until 1973, Olin operated an aluminum manufacturing facility in Hannibal, Ohio. \textit{Id.} at 1135. The processing equipment Olin used produced hazardous polychlorinated biphenyls ("PCBs"), and Olin was informed about this hazard in 1972. \textit{Id.} Olin responded by constructing an incinerator, but failed to eliminate contaminants from the impoundment pool or from the soil. \textit{Id.} In 1973, Olin sold its aluminum operations to the Consolidated Aluminum Corporation ("Conalco"). \textit{Id.} The parties executed several broadly-worded agreements relating to the purchase that purported to absolve Olin of any post-divestment liabilities. \textit{Id.} In 1986, upon inspecting the Hannibal site, the Ohio Environmental Protection Agency ordered Conalco to undertake remedial measures. \textit{Id.} While Conalco complied, it sought contribution from Olin. \textit{Id.} Olin refused to cooperate and filed a declaratory judgment action, seeking absolution from liability under the terms of the agreements. \textit{Id.}
  \item \textsuperscript{33} \textit{Id.}
  \item \textsuperscript{34} \textit{Id.} at 1140-41. The court initially determined that neither the statute itself nor CERCLA's legislative history addressed the issue. \textit{Id.} This conclusion was consistent with the \textit{Mardan} court's analysis. The \textit{Mardan} court also found congressional intent unclear as to whether to formulate a federal rule for CERCLA releases. For a discussion of the \textit{Kimbell Foods} test, see \textit{supra} note 19.
  \item \textsuperscript{35} \textit{Olin}, 807 F. Supp. at 1140-41. The court asserted that a uniform federal rule was unnecessary since state contract law was well-developed in the area of releases and indemnifications. \textit{Id.} at 1141. In examining the second factor of the \textit{Kimbell Foods} test, the court found that utilizing state law would not frustrate CERCLA's goals because it would not preclude the government from recovering response costs. \textit{Id.} Additionally, the court asserted that a federal rule might interfere with relationships predicated on state law since parties might reasonably expect their agreements to be governed by state law. \textit{Id.}
  \item \textsuperscript{36} 985 F.2d 1427 (10th Cir. 1993).
\end{itemize}
of a waste disposal site. In a latter phase of the litigation, a defendant filed an indemnity claim against a codefendant based upon certain provisions in their disposal contracts. Rather than devising a federal rule, the court relied on state law principles in interpreting the contract. The court applied Oklahoma law and held that the indemnification language was broad enough to include CERCLA liability.

In sum, the broad language approach suggests that courts interpret releases to effectuate the contracting parties' intentions. Courts applying this analysis often presume that environmental liability was within the contemplation of the parties if the contract language is sufficiently all-encompassing.

37. Id. at 1431-32. Collectively, the 37 defendants were organized as the Hardage Steering Committee ("HSC"). Id. at 1432. The defendants joined forces to contest various elements of the government's proposed cleanup remedy. Id.

38. The suit had to proceed in four phases due to the complexity of the litigation. Id. In the first phase, the district court determined the appropriate clean-up remedy. Id. In the next phase, the court determined the respective liability of the parties as responsible parties under CERCLA. In this phase, McDonnell Douglas Corporation ("MDC") and most of the other defendants stipulated to liability as generators of waste. Id. United States Pollution Control, Inc. ("USPCI") was found liable as a transporter of hazardous waste. Id. Phase III of the litigation settled all cross-claims and third-party claims. Id. In this third phase, MDC brought an indemnity claim against USPCI. Id. Phase IV allocated response costs among the parties. Id. The appeal concerned the district court's handling of Phase III and Phase IV of the litigation. Id.

39. Id. By virtue of two contracts between the parties, USPCI agreed to transport and dispose of hazardous waste generated by MDC. Id. at 1433. These contracts contained several indemnification provisions. Id. One provision stated that USPCI released MDC from liability "from any claim of loss or damage resulting from the transporting or disposal of said materials." Id. at 1434 (quoting Attachment A to both contracts).

40. Hardage, 985 F.2d at 1433. The court determined that a uniform federal rule was unnecessary since the government's ability to recoup cleanup costs under CERCLA would not be impeded by an allocation of liability among the parties. Id. at 1433 n.2. Furthermore, the court noted that the litigants agreed that state law applied. Id. at 1433.

41. Id. at 1434. The court concluded that the indemnity provision unambiguously released MDC from liability. Id.


43. See, e.g., Hardage, 985 F.2d at 1434-35 (finding that because of all-inclusive language of indemnity agreement, parties intended to include environmental liability); American National Can, No. 89 C 0168, 1990 WL 125568, at 3 (N.D. Ill. Aug. 22, 1990) (broadly-worded release presumably contemplated future environmental liability).
B. The Express Language Approach: Moving Towards Uniformity

The more narrow approach to interpreting indemnity agreements requires that agreements specifically mention environmental liability in order to transfer CERCLA costs. While some are still reluctant to require a uniform federal rule to this effect, several courts have nonetheless embraced this approach.

For example, in Chemical Waste Management v. Armstrong World Industries, generators of hazardous waste argued that a landfill owner assumed environmental liability through various waste disposal contracts and could not recover costs from the generators. The generators argued that the landfill owner had contractually warranted for safe and legal waste disposal and agreed to indemnify the generators for any costs incurred in connection with the disposal. The court held, however, that since the contracts bore no express provisions releasing the generators from environmental liability, the landfill owner could attempt to recover response costs.

45. Id. at 1292. While Chemical Waste Management ("Chem Waste") was the owner of the landfill site at the time of the CERCLA litigation, the generators had previously contracted with the Sabatrol Corporation. Id. at 1287. In 1980, Chem Waste purchased the assets of the Sabatrol Corporation. Id. After the purchase, the Pennsylvania Department of Environmental Resources ("DER") found violations of the DER permit and ordered Chem Waste to take corrective action. Id. at 1288. Eventually, the parties reached a settlement under which Chem Waste was forced to comply with the DER orders. Id. at 1289. In 1985, Chem Waste brought suit against the generators of the waste for recovery of CERCLA response costs. Id.
46. Id. at 1293. The defendant generators claimed that Chem Waste warranted the disposal of waste both expressly and impliedly. Id. As for the express warranty argument, the defendants failed to provide the court with any applicable contract provisions. Id. at 1293-94. Additionally, the court rejected the implied warranty argument. Id. at 1294. The court maintained that it would not "engage in judicial legislation that would reshape CERCLA's liability scheme." Id.
47. Id. Here again, the defendants argued that Chem Waste had expressly and impliedly agreed to indemnify the generators. Id. Because Armstrong had not proved that it had in fact contracted with Chem Waste, the court dismissed the express indemnity argument. Id. at 1295. The court also refused to find an implied warranty. Id. Alluding to the policy goals of CERCLA, the court remarked, "[i]f owner/operators and generators wish to redistribute the risks distributed by Congress, they must do so clearly and unequivocally." Id.
48. Id. at 1294. The court held that an owner of a hazardous waste facility could seek past and future response costs from a transporter in connection with the cleanup of hazardous substances. Id.

A New York federal district court handed down a similar decision, refusing to impose liability on a transporter of hazardous waste who entered into a broadly-worded indemnity agreement with a waste generator. See New York v. SCA Servs., No. 83 Civ. 6402, 1993 WL 355348, at *1 (S.D.N.Y. Sept. 8, 1993). See also Scott Dean, Waste Hauler Avoids CERCLA Liability: First Impression Ruling by Federal Judge in
The court in *Southland Corporation v. Ashland Oil, Inc.* used a similar analysis. Southland Corporation ("Southland") purchased a contaminated chemical plant from Ashland Oil ("Ashland"). At the behest of the New Jersey Department of Environmental Protection, Southland undertook remedial clean-up measures on the plant site. When Ashland refused to contribute to the cleanup, Southland filed suit. Seeking to evade CERCLA liability, Ashland claimed that Southland had assumed all liabilities through the purchase agreement executed between the parties. The court disagreed. Because the agreement did not explicitly refer to "CERCLA-like" liabilities, the court held that Ashland was not freed of liability, and Southland was entitled to seek recovery for contribution of cleanup costs.

New York, *The Legal Intelligencer*, Oct. 5, 1993, at 9 (discussing New York v. SCA Services, Inc.). According to Dean, this decision was the first federal decision favoring waste transporters. The judge interpreted the contract language as indemnifying the generator only for liabilities resulting from the transporter's removal, storage, or disposition of the waste. New York v. SCA Services, Inc., No. 83 Civ. 6402, 1993 WL 355348, at *4. Since the generator's CERCLA liability stemmed from its own activities in arranging for the disposal, and not the transporter's activities, the agreement did not include CERCLA liability.

Presumably, Southland was aware of environmental hazards at the plant since problems had been discovered there ten years earlier. Ashland took corrective action at the site as a result of a 1975 consent judgment with the New Jersey Department of Environmental Protection ("DEP"). At the time of the purchase, however, DEP was still expressing concerns about groundwater contamination.

After in-depth studies revealed extensive contamination, Southland was obliged to conduct a Remedial Investigation and Feasibility Study ("RI/FS"). In 1987, Southland entered into an administrative consent order which required it to launch clean-up efforts.

Southland petitioned Ashland for contribution several times before and after the RI/FS. In support of its theory that Southland contractually assumed CERCLA liabilities, Ashland referred to an "as is" provision, an indemnification provision, a waste removal provision, and a two-year survival provision. The court examined each provision of the agreement in turn. First, the court held that the "as is" provision only barred claims based on breach of warranty. Second, the court examined the waste removal provision. Concluding that the provision would only preclude a breach of contract claim, the court commented that it was "far from being the express assumption of liability which Ashland argues it is." Lastly, Ashland maintained that the indemnification provision, along with the revocation of this indemnification two years later, bolstered Ashland's contention that it was relieved of all liability. However, the court dismissed this argument by asserting that even if all of Ashland's promises were terminated, Southland would only be barred from bringing a breach of contract action.

The court recognized that the parties could not have referred to CERCLA in the agreement since the contract was executed prior to CERCLA's enactment. Notwithstanding, because the agreement was "completely lacking in any
C. Fashioning a Uniform Federal Rule

By far, the large majority of courts have refrained from establishing a uniform federal rule to interpret contracts in the CERCLA context. However, a few courts have urged the establishment of a uniform federal rule requiring an express release of CERCLA liability. The district court in Weigmann & Rose International Corp. v. NL Industries took this position. Disregarding state law, the United States District Court for the Northern District of California held that an “as is” clause in a purchase contract did not relieve a seller of CERCLA liability. The court pointed out that the disputed clause was standard in every deed, and CERCLA expressly forbids such general conveyances from transferring liability to the purchaser. Because the statute itself prevents an “as is” clause from transferring liability, the court did not look beyond the statutory language in its interpretation. Accordingly, the court held that federal law, not state law, controls the interpretation of “as is” clauses.

In Mobay Corp. v. Allied-Signal, Inc., the United States District Court for the District of New Jersey moved further towards creating language which expressly release[d] Ashland from future liabilities based on its hazardous waste disposal practices,” the court still held that the contract did not transfer CERCLA liability to Southland.

56. 735 F. Supp. 957 (N.D. Cal. 1990). In 1975, NL Industries sold property (Site R) to Weigman & Rose. Id. at 958. In 1987, at the instigation of the California Department of Health Services, Weigman & Rose excavated the land and found buried metal drums that had been leaking hazardous waste. Id. In 1988, Weigman & Rose filed suit against NL Industries to recover response costs. Id. NL Industries argued that the “as is” clause in the conveyance relieved NL of any CERCLA liabilities. Id. at 959.

57. Id. at 962.

58. Id. at 961. The court asserted that the “as is” clause was “standard, boiler-plate language routinely included in every contract and deed . . . .” Id. The court distinguished this contract from the agreement in Mardan. Id. The Mardan agreement was executed after the purchase agreement and was intended to settle all disputes between the parties. Id.

59. Id. at 962. The court strictly construed the first sentence of CERCLA § 107(e) as preventing “as is” clauses from transferring CERCLA liability. Id. The first sentence of CERCLA § 107(e) provides: “No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator . . . to any other person the liability imposed under this section.” CERCLA § 107(e)(1), 42 U.S.C. § 9607(e)(1). This provision ensures that “buyers and sellers remain liable to third-party claimants irrespective of the agreement between them. In this manner, private agreements allocate costs without diluting CERCLA liability.” Bereday, supra note 6, at 202.


61. Id. As an aside, the court mentioned that the same result probably would have been reached under state law. Id. at 962 n.4.

a federal rule. In that case, the parties had executed an assumption agreement, which, according to Allied, transferred CERCLA liability to Mobay.63 Relying on the Mardan dissent,64 the court devised a federal rule to interpret the assumption agreement.65 The court held that to promote the goals of CERCLA, an agreement purportedly transferring CERCLA liability must explicitly refer to "environmental-type liabilities."66 Because the assumption agreement made no such reference, the court did not absolve Allied of CERCLA liability.67

In spite of these precedents, the Boston Gas court applied Massachusetts state law in formulating its own rule.68 According to the court, the language of an agreement must be broad enough to act as a general release or it must specifically recognize future environmental liability if it is to effectively transfer CERCLA liability from party to party.69

III. JOHN S. BOYD CO. V. BOSTON GAS CO.

A. Facts

Until 1951, the Lynn Gas and Electric Company ("LGEC"), in addition to producing electricity, only manufactured coal gas.70 When natural gas became available, LGEC stopped producing coal gas and produced only natural gas and small quantities of oil gas to

63. Id. at 347. Allied argued that since the clause included damages from "any condition existing, substance consumed or discharged," and environmental liabilities existed at the closing date, Mobay accepted liability. Id. at 355.

The parties executed the assumption agreement in 1977 after Harmon Colors (predecessor to Mobay) purchased the site from Allied. Id. at 348. In 1986, groundwater samples taken at the site showed the presence of hazardous substances. Id. In 1988, the New Jersey Department of Environmental Protection and Mobay executed an administrative consent order, requiring Mobay to undertake remedial measures. Id. As a result, Mobay sued Allied for contribution under CERCLA. Id.

64. Id. at 351-52. After pointing out the ambiguity of CERCLA’s legislative history, the Mobay court reviewed the Kimbell Foods test. Id. at 351. For a discussion of the Kimbell Foods test, see supra note 19 and accompanying text. The court basically adopted the analysis employed by the dissent in Mardan. Id. at 351-52. For a discussion of the Mardan dissent, see supra notes 23-25 and accompanying text.


66. Id. at 357-58. In its analysis, the court also relied on Chemical Waste Mgmt., Inc. v. Armstrong World Indus., Inc., 669 F. Supp. 1285 (E.D. Pa. 1987), and Southland Corp. v. Ashland Oil, Inc., 696 F. Supp. 994 (D.N.J. 1988), for the proposition that a release of CERCLA liability must be express. Id. at 357. For a full discussion of the cited decisions, see supra notes 44-55 and accompanying text.


68. Boston Gas, 992 F.2d at 406.

69. Id. at 406-07.

70. Id. at 403.
supplement its supply of natural gas. In 1957, New England Electric System ("NEES") bought 97% of LGEC. Two years later, NEES created the Lynn Gas Company ("Lynn Gas") and structured a transaction whereby Lynn Gas acquired the gas-producing portion of LGEC. LGEC kept the electric portion, changed its name to Lynn Electric, and later merged into the Massachusetts Electric Company.

As part of the transaction, the parties executed a separation agreement in which Lynn Gas agreed to assume "all the duties and liabilities of [LGEC] related to such gas business." In 1973, NEES sold Lynn Gas to Boston Gas, an unaffiliated company. Boston Gas agreed to assume only the existing liabilities.

After discovering coal and oil gas waste on the land, the subsequent purchasers sued NEES, its subsidiaries and Boston Gas for contribution of resulting CERCLA cleanup costs. The court held Massachusetts Electric liable, as the successor to Lynn Gas and Electric Company, for the cleanup of the coal gas waste. The court also found NEES responsible for the cleanup of the oil gas waste. While the court's opinion consisted of three parts, this Note focuses solely on Part I of the decision, the issue of liability for the coal gas waste.

71. Id. This process was called "peak shaving" because the oil gas was manufactured only in peak periods of gas use. Id.
72. Id. NEES was a holding company owning various utilities. Id.
73. Boston Gas, 992 F.2d at 403. NEES then merged Lynn Gas into its gas division. Id.
74. Id.
75. Id. (quoting separation agreement). By the terms of the agreement, Lynn Gas promised to "indemnify and save harmless Lynn Electric Company from any duty or liability with respect to the gas business." Id. at 404 (quoting separation agreement). Despite this agreement, the separation between the two entities was not completed until 1970 when LGEC (then Massachusetts Electric) conveyed the last of the gas-related parcels to Lynn Gas. Id.
76. Id. The SEC ordered NEES to divest itself of its gas holdings. Id.
77. Id. Boston Gas agreed to assume existing liabilities in the Purchase Agreement and in another document termed "Assumption of Liabilities." Id.
78. Boston Gas, 992 F.2d at 403. Boston Gas also filed a claim against NEES, alleging that NEES was responsible for the oil gas waste on the property that Boston Gas had purchased from Lynn Gas. Id.
79. Id.
80. Id.
81. While in Part II of the decision the court initially addressed contract issues between Boston Gas and Lynn Gas arising from the Closing Agreement, the court quickly dispensed with this issue since the language of the contract expressly limited liabilities to those existing at that time. Id. at 407.

The rest of Part II addressed whether a parent company is liable for the debts of its subsidiary. Id. at 407-08. Part III addressed residual matters not relevant to this discussion. Id. at 408-09.
B. Narrative Analysis

Before attempting to determine which party was liable for clean-up costs in light of the various contracts involved, the *Boston Gas* court first determined who the potentially responsible parties ("PRPs") were under CERCLA. As the court recognized, when two corporations merge, the surviving corporation is liable for CERCLA clean-up obligations. If more than one corporation is a responsible party, however, the government can pursue any and all corporations. Nevertheless, the court pointed out that CERCLA does not bar two or more parties from contractually allocating responsibility.

After concluding that the parties theoretically could have allocated responsibility by agreement, the First Circuit then considered the validity of the alleged allocation. Ultimately, the court de-

82. *Id.* at 404. The court first looked to CERCLA § 9607(a) to define "responsible parties." For the statutory definition of "responsible parties" under CERCLA, see *supra* note 4.

83. *Boston Gas*, 992 F.2d at 404 (citing Anspec Co. v. Johnson Controls, Inc., 922 F.2d 1240, 1245 (6th Cir. 1991); Louisiana-Pacific Corp. v. Asarco, Inc., 909 F.2d 1260, 1262-63 (9th Cir. 1990)). The court needed to make this determination in order to impose liability on Massachusetts Electric as the successor to LGEC. See also *Smith Land & Improvement Corp. v. Celotex Corp.*, 851 F.2d 86, 91 (3d Cir. 1988) (stating that in a merger, debts and liabilities are responsibility of surviving entity); *Walsh*, *supra* note 5, at 454 (stating that liabilities are absorbed by existing corporation after merger or consolidation); *Fletcher*, *supra* note 3, § 7121, at 226 (stating that liability is sometimes mandated by statute).

84. *Boston Gas*, 992 F.2d at 405. For a discussion of potentially responsible parties, see *supra* note 4. After the government seeks response costs from one PRP, that party may recover from other responsible parties in a cost recovery action. See Bereday, *supra* note 6, at 175. However, this method of cost recovery often results in inequitable liability schemes because "[i]f liable parties are not always responsible for creating the initial pollution." *Id.* (emphasis in original). Thus, purchasers who are negligent in their inspection of the property may be as liable as flagrant polluters. *Id.*

85. *Boston Gas*, 992 F.2d at 405. The court remarked that "indemnification and release agreements are 'tangential' to the enforcement of CERCLA." *Id.* (citing *Jones-Hamilton Co. v. Beazer Materials and Servs.*, Inc., 973 F.2d 688, 692 (9th Cir. 1992)).

CERCLA permits parties to contractually relieve themselves of liability. See CERCLA § 107(e)(1), 42 U.S.C. § 107(e)(1). For a discussion of CERCLA § 107(e)(1), see *supra* note 6 and accompanying text. However, some scholars have suggested that the efficacy of indemnification agreements is still questionable. See generally *Dolan*, *supra* note 6. Noting that some courts have been reluctant to uphold indemnity agreements when one of the parties is confronted with CERCLA costs, *Dolan* concludes that PRPs have reason to be apprehensive. *Id.* See also *Bereday*, *supra* note 6, at 166-67 (asserting that because private risk allocation is still controversial, buyers and sellers face uncertainty in commercial expectations). *Bereday* concludes that "private risk allocations transfer exposure to potential liability, not liability in fact." *Id.* at 198.

86. *Boston Gas*, 992 F.2d at 405. The court considered whether liability had shifted via agreement from LGEC to Lynn Gas and then to Boston Gas. *Id.*
contractual release of CERCLA liability

decided that Boston Gas had not assumed liability for the coal gas waste. Moreover, the court found that not even Lynn Gas had assumed liability because the separation agreement between Lynn Gas and LGEC did not include a transfer of environmental liability. Instead, environmental liability remained with LGEC and its successor, Massachusetts Electric. In reaching this conclusion, the court examined the language of the separation agreement and an indenture entered into between Lynn Gas and LGEC. Because these documents did not explicitly mention environmental liability, the court then attempted to ascertain the intention of the parties.

Initially, the court noted that the district court had wavered in deciding whether to apply a federal or state rule of contract interpretation. Noting that the majority of courts relied on state substantive law, the First Circuit decided to follow suit. Applying Massachusetts law, the court held that for the agreement to have transferred CERCLA liability, the language must have been broad enough either to foresee future liability or to relieve LGEC of all liability through a general release. In the court's opinion, the separation agreement language failed on both counts.

After scrutinizing the separation agreement, the court conceded that the general language attempted to relieve LGEC of all liability related to the gas-producing business. However, the court found it significant that the separation agreement then listed those
obligations specifically. In the court’s opinion, this specific language diluted the effects of the broad language and failed to mention future liabilities of any sort.

The court also found that the indenture only summarily listed the liabilities assumed by Lynn Gas. Conceding that the list of liabilities might not have been exhaustive, the court decided that construing the agreement to include then-nonexistent liabilities would be unreasonable.

Applying its rule of contract interpretation, the court determined that neither the separation agreement nor the indenture evinced an intent to transfer environmental liability. Thus, the First Circuit held that the district court correctly found Massachusetts Electric liable as a responsible party under CERCLA for the cleanup of the coal gas waste.

IV. DISCUSSION

In fashioning its state law rule requiring broad language to transfer CERCLA liability, the Boston Gas court neglected to consider the advantages of a uniform federal rule in applying potential transfers of CERCLA liability. Following the majority of federal courts, the First Circuit declined to impose a federal rule. Before bowing to precedent, however, the court should have considered CERCLA’s overriding purpose and balanced the competing fed-
eral and state interests in achieving uniform results in this area of contract law.105

A. Is the Broad Language Approach Consistent With the Purposes and Objectives of CERCLA?

In enacting CERCLA, Congress intended to provide a federal cause of action to enable the government to recover cleanup expenses promptly and to induce responsible parties to voluntarily control environmental hazards.106 Congress hoped to make responsible parties pay for the cost of cleaning up waste sites rather than spend taxpayer dollars to remedy the problem.107 While neither Congress nor CERCLA has explicitly mandated a uniform federal rule regarding releases from CERCLA liability,108 a uniform rule would promote CERCLA’s purposes and goals.109 Such a rule

(emphasis added). However, CERCLA’s goal of protecting all citizens from exposure to hazardous materials suggests the need for a federal liability standard. Id. at 1269. Although states also have an interest in protecting their citizens, this interest can be better served by imposing a nationally uniform liability standard. Id.

105. In deciding whether to apply a uniform federal rule, the federal interest in intrastate uniformity should be weighed against the state’s interest in the subject matter. Id. at 1268.


107. See Smith Land & Improvement Corp. v. Celotex Corp., 851 F.2d 86, 92 (3d Cir 1988); Mobay Corp. v. Allied-Signal, Inc., 761 F. Supp. 345, 349 (D.N.J. 1991). See also Layfield, supra note 5, at 1269 (protecting tax dollars is federal interest in CERCLA liability); Bereday, supra note 6, at 174 (by enacting CERCLA, Congress wanted to shield taxpayers from absorbing liability for response costs by forcing solvent PRPs to pay).

108. Mobay, 761 F. Supp. at 351. The Mardan dissent noted that Congress intended that a federal common law would be developed with respect to CERCLA liability. Mardan Corp. v. C.G.C. Music, Ltd., 804 F.2d 1454, 1464 (9th Cir. 1986) (Reinhardt, J., dissenting). In addition, the dissent asserted that “a uniform federal rule regarding releases from CERCLA liability serves Congress’ goals in the same manner that a uniform rule regarding liability does.” Id. The dissent also suggested that because federal law governs releases from a federal cause of action, a federal rule should presumptively apply. Id.

109. See Bereday, supra note 6, at 208. The retributive force of CERCLA is diluted when innocent purchasers are held liable, even though they are not in fact responsible for the pollution. Id. Hence, if one party intends to assume environmental liability, these liabilities should be explicitly mentioned in the contract to avoid any uncertainties. Id. at 209-10. An allocation of this nature would be consistent with CERCLA’s fundamental goal of cleaning up polluted areas. Id. at 212. See also Joseph A. Sevack, Note, Passing the Big Bucks: Contractual Transfers of Liability Between Potentially Responsible Parties Under CERCLA, 75 MINN. L. REV. 1571, 1593 (1991) (“National uniformity is essential to best accomplish CERCLA’s goals of
would permit parties to allocate CERCLA costs without permitting responsible parties to escape liability altogether. At the same time, a uniform rule would provide a consistent framework for determining who must pay for cleanups.

In contrast, the application of state law may well frustrate CERCLA's goal of ensuring rapid responses to environmental hazards. Because CERCLA provides for cost recovery, the current operator of a site can undertake remedial measures and seek contribution from the original polluter. However, with the application of state law, an operator who enters into a broadly-phrased, boiler-plate release may lose his right of recovery, despite the parties' true intention. Thus, under this approach, the operator may choose to let the government foot the bill for a cleanup rather than undertake action on its own. In order to recover tax dollars, the government will be forced to sue for contribution from the responsible parties. The disadvantages are obvious. Finite resources and a plethora of problem sites hamper the government's ability to act swiftly. Additionally, government action is usually initiated only after voluntary efforts have been exhausted. Even when the government does attempt a cleanup, it must employ independent contractors to clean up contaminated sites. These contractors are promoting quick, voluntary cleanup and placing the financial burden on the responsible parties.

110. See Bereday, supra note 6, at 207 (suggesting that Congress intended to permit allocation of risk between parties as long as parties are dealing in arms-length transactions). However, Congress also intended to prevent responsible parties from transferring their liability to third parties such as the government. Id. at 206-07. See also Sevack, supra note 109, at 1592 (Congress imposed liability on both past and present owners to preclude any responsible parties from escaping liability).

111. Private agreements in purchase transactions provide certainty and stability and allow parties to minimize risk. Bereday, supra note 6, at 208. However, judicial inconsistency in dealing with these agreements "creates doubt and uncertainty in real estate markets." Id. at 212. In addition, the uneven application of state law produces "disparate results" and "uncertainty in the minds of the parties." Sevack, supra note 109, at 1593-94.

112. Mardan, 804 F.2d at 1464 (Reinhardt, J., dissenting).

113. Id.; Sevack, supra note 109, at 1592 (asserting that if operator or owner is unable to obtain contribution, it may opt to wait for government to clean up site and apportion liability among parties). If the government undertakes a cleanup, "the owner or operator would be required to pay only its share rather than all the costs." Id.

114. Mardan, 804 F.2d at 1465 (Reinhardt, J., dissenting).


116. Id.; Sevack, supra note 109, at 1591 (asserting that government clean-up action is last resort taken after voluntary efforts have failed).
hesitant to accept clean-up contracts that could expose them to enormous liability. Therefore, it should be dealt with at the national level. The Mobay court recognized this fact by adopting a federal rule concerning releases from CERCLA liability. According to the court, uniformity is necessary "to prevent the vagaries of differing state laws from affecting the incentive for voluntary cleanup." Of course, individual states have an interest in contracts drafted in their respective states. However, given the magnitude of the problem, the federal government's interest in the

B. Weighing Competing Interests

Hazardous waste does not respect state boundaries. It is a problem of national proportions. Therefore, it should be dealt with at the national level. The Mobay court recognized this fact by adopting a federal rule concerning releases from CERCLA liability. According to the court, uniformity is necessary "to prevent the vagaries of differing state laws from affecting the incentive for voluntary cleanup." Of course, individual states have an interest in contracts drafted in their respective states. However, given the magnitude of the problem, the federal government's interest in the

- 117. The government may elect not to indemnify a contractor against liability for negligence in the performance of a clean-up contract. See Environment — Superfund — Government Contractor Defense, 58 Fed. Cont. Rep. (BNA) No. 18, at D-17 (Nov. 9, 1992). Obviously, because they fear exposure to liability, contractors are reluctant to bid on clean-up projects. George Lobsenz, NSIA: Liability Concerns Slow Cleanup, ENV'T WK., Dec. 19, 1991. In particular, defense contractors who could offer technological breakthroughs in conducting cleanups are reluctant to enter the environmental field. Id. According to the National Security Industrial Association ("NSIA"), "many risk managers today believe it is safer for businesses to produce weapons and ammunition than it is for them to become involved with environmental pollution abatement and cleanup work." Id.

A report by NSIA recommended that legislation limit contractor negligence liability through insurance coverage and surety bonds. Id. In 1993, EPA responded to contractors' concerns by setting guidelines for indemnification. EPA Limits Indemnification to $50 Million, SUPERFUND WK., Jan. 22, 1993. If private insurance is unattainable at reasonable prices, the agency will insure against negligence claims for up to $50 million. Id. However, contractors are still dissatisfied. Id. Peter Tunnicliffe, president of the Hazardous Waste Action Coalition, cautioned that the guidelines will only increase the risks to contractors and leave "the public exposed to claims that the Superfund contractors cannot afford to absorb." Id.

- 118. See Sevack, supra note 109, at 1591 (suggesting that current owners and operators of site are in best position to commence cleanups).

- 119. See Layfield, supra note 5, at 1269. Layfield recognized the strong federal interest in CERCLA liability, stating that "hazardous-material regulation is a complex national problem." Id. See also United States v. Chem-Dyne Corp., 572 F. Supp. 802, 808 (S.D. Ohio 1983) (stating that hazardous waste release is "problem of national magnitude involving uniquely federal interests").


- 122. See Bereday, supra note 6, at 210.
containment of hazardous waste, as articulated in CERCLA, must prevail.\(^\text{123}\)

Additionally, as the Mobay court and the Mardan dissent suggested, application of a uniform federal rule would not interfere with existing state law relationships.\(^\text{124}\) In reaching this conclusion, both opinions emphasized that private parties should expect a federal rule to apply because of the well-established principle that federal law governs releases from federal liability.\(^\text{125}\) For this reason, the Mobay court and the Mardan dissent advocated the adoption of a uniform federal rule recognizing only express releases from CERCLA liabilities.\(^\text{126}\)

Unfortunately, the Boston Gas court did not reach its decision based upon a weighing of state and federal interests. Instead, with little explanation, the First Circuit turned to state law, disregarding the federal interests embodied in CERCLA.

C. Additional Considerations: The Intention of the Parties

In Boston Gas, the First Circuit's purported goal was to ascertain the intent of the parties with respect to liability.\(^\text{127}\) After analyzing the language of the agreements, the court concluded that because the agreements were narrowly drafted, the parties did not intend to transfer future environmental liability.\(^\text{128}\) However, this conclusion

\(^{123}\) See Mobay, 761 F. Supp. at 351 (stating that CERCLA represents "a substantial federal interest in the abatement of hazardous waste.") (citing United States v. A & F Materials Co., 578 F. Supp. 1249, 1255 (S.D. Ill. 1984). Cf. Layfield, supra note 5, at 1269 (arguing for a uniform federal rule regarding successor liability because "the federal interests in uniformity and interstate regulation of hazardous materials outweigh the presumption in favor of state law.")

\(^{124}\) Mobay, 761 F. Supp. at 352; Mardan Corp. v. C.G.C. Music, Ltd., 804 F.2d 1454, 1464 (9th Cir. 1986) (Reinhardt, J., dissenting). Cf. Sevack, supra note 109, at 1596 (maintaining that uniform federal rule prohibiting contractual allocation of CERCLA costs would not disrupt settled expectations of parties). Arguably, it would be "unrealistic to assert that parties will be unsure which body of law governs their agreements." Id. Because of the persistent national clamor over CERCLA, "[p]arties involved in the transfer of sites possibly contaminated with hazardous waste are likely to be well aware of CERCLA's implications." Id.

\(^{125}\) Mardan, 804 F.2d at 1465 (Reinhardt, J., dissenting); Mobay, 761 F. Supp. at 352. In support of this position, the Mardan dissent pointed out that "irrespective of which rule governs CERCLA releases, documents covering transactions of the type involved here must be prepared in light of applicable federal law." Mardan, 804 F.2d at 1465 (Reinhardt, J., dissenting). See also Sevack, supra note 109, at 1597 (stating that because of rule that federal law governs release of federal claims, PRPs should not be surprised to find that federal law governs validity of agreements allocating CERCLA costs).

\(^{126}\) Mardan, 804 F.2d at 1466; Mobay, 761 F. Supp. at 357-58.

\(^{127}\) Boston Gas, 992 F.2d at 406.

\(^{128}\) Id. at 407.
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seems incongruous because it necessarily implies that had the language been broader, the court would have foisted the intention of transferring CERCLA liability upon the parties. It is not at all clear whether such a decision would have realized the parties' intent. A rule requiring an express release of environmental liability would eliminate any confusion. Indeed, parties who executed agreements prior to the CERCLA's enactment may not have foreseen the possibility of environmental liability and the necessity of expensive cleanups. One way to ensure that the intention of contracting parties controls liability apportionment is to require expressly-worded CERCLA releases.

V. Impact

The scope of *Boston Gas* is narrow because the court's interpretation of purported CERCLA releases applies only when courts in the First Circuit invoke Massachusetts state law. Moreover, since the *Boston Gas* court did not delineate exactly how broad is broad enough language, courts must continue along the path of surgically dissecting agreements, ever mindful of state law principles of contract interpretation.

However, Massachusetts is not the only state confronting this dilemma. Each state must fashion and apply its own rules regarding the interpretation of releases in the CERCLA context. To avoid this morass, federal courts should develop a federal rule. Not only


130. *See In re* Hemingway Transport, Inc., 126 B.R. 650, 653 (D. Mass. 1991) (suggesting that more specific waivers of environmental claims may lead to result that does not reflect what parties intended). However, this court advocated the broad language approach only when the intent of the parties was clear. *Id.*


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would a federal rule provide predictability and uniformity, it would also help effect the contracting parties' intent. Requiring parties to transfer CERCLA liability by express provisions would also ensure that unwitting parties are not saddled with unanticipated liability. Lastly, a uniform federal rule is consistent with the policies underlying CERCLA. It would encourage current operators to clean up hazardous conditions promptly, secure in the knowledge that their right to contribution would not be barred by the vagaries of state law.

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133. See Sevack, supra note 109, at 1597. Sevack suggests that “a uniform federal law governing the contractual transfers of CERCLA liability would promote certainty on the part of . . . companies as to which law governed their agreements.” Id. Instead of attempting to decipher the intricacies of state law, companies could rely on one source to govern their agreements. Id. n.150.


135. CERCLA imposes strict liability on current and former owners of land. For a discussion of CERCLA's liability structure, see supra note 2. This standard sometimes results in the imposition of liability on innocent purchasers, regardless of their actual responsibility for causing the pollution. Bereday, supra note 6, at 169.