

With the U.S. Supreme Court's issuance of its major CERCLA opinion yesterday in *Burlington Northern*, the Court has now decided four of the five major environmental cases on its docket this Term. But a little-noticed [order](#) from the Court-also issued yesterday-suggests that the Court is struggling mightily with the fifth and final case, *Coeur Alaska, Inc. v. Southeast Alaska Conservation*, Nos. 07-984 & 07-990.

*Coeur Alaska* raises some fascinating issues about how two discrete regulatory programs of the federal Clean Water Act (CWA) should be reconciled. The litigation is being waged over a proposed gold mine in Alaska that, if developed, will discharge substantial volumes of mining wastes into an adjacent lake. The question for the Court: should the project be reviewed under the effluent limitation standards administered by USEPA under sections 301 and 306 of the CWA, or does the U.S. Army Corps of Engineers have exclusive jurisdiction over the project under CWA section 404's dredge-and-fill/wetlands provisions?

The justices heard oral arguments in *Coeur Alaska* in January 2009, but the Court's order yesterday suggests they're still not close to a decision in the case. That order directs the parties and amici to file supplemental briefs on both key issues of statutory interpretation and the proper scope of judicial remedies in the case.

It's still likely the Court will decide *Coeur Alaska* before it recesses at the end of June. But this one appears to be going down to the wire.