The Supreme Court decided an important Superfund case today, BURLINGTON NORTHERN & SANTA FE RAILWAY. CO V. UNITED STATES. The case narrowed a theory under which companies can be held liable for clean-up costs as "arrangers" of waste disposal. It also made it easier for lower courts to divide up liability between defendants, rather than holding all of them liable and letting them fight amongst themselves over how to divide liability. Details after the jump.

The first issue in Burlington Northern was the scope of arranger liability under Section §9607(a)(3), which provides:

> (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, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances.

The Court stressed that liability may not extend beyond the limits of the statute itself. Because CERCLA does not specifically define what it means to "arrang[e] for" disposal of a hazardous substance, the phrase should be given its ordinary meaning, under which "arrange" implies action directed to a specific purpose. Thus, under §9607(a)(3)'s plain language, an entity may qualify as an arranger when it takes intentional steps to dispose of a hazardous substance. To qualify as an arranger, a company selling a product must have entered into sales with the intent that at least a portion of the product be disposed of during the transfer process by one or more of §6903(3)'s methods.

Another issue was the share of liability for railroads that owned or leased parts of the property. The Court found a specific basis for apportioning liability rather than assessing joint and several liability. The District Court reasonably apportioned the Railroads' share of the site remediation costs based on the percentage of the total area of the facility that was owned by defendants, the percentage of time they had possession, and the share of clean-up attributable to toehr chemicals. This portion of the opinion does not purport to establish any new principles but does display a more favorable attitude toward apportionment than many lower courts.