

Following up on yesterday's post, I thought it would be interesting to take a look at the trajectory of Supreme Court cases dealing with CERCLA liability.

In the federal courts generally, CERCLA cases began slowly, with one in 1981 and 11 in 1982. The number of cases per year then built steadily until at peak of 356 cases in 1993. After the peak, the number slowly subsided to 155 in 2002, before rising again to a steady level of about 250 cases per year.

Given the Supreme Court's functions of giving guidance and resolving conflicts between lower courts, you might expect the Court's CERCLA docket to follow a similar trajectory. That turns out not to be right. The Court has decided eleven CERCLA liability cases. The rate is remarkably steady at two cases in every five year period, beginning in 1985-1990 and continuing through 2005-2010.

Notably, there's no reflection in the Court's docket of large surge of CERCLA cases from 1985-1989, when the federal courts issued over three thousand published CERCLA opinions, about 60% of all published opinions on the statute. At the time when it counted most the lower courts were left pretty much on their own in terms of developing CERCLA law.