No. 18-1160

In the Supreme Court of the United States

TECK METALS LTD., FORMERLY KNOWN AS TECK COMINCO METALS, LTD.,

PETITIONER,

v.

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, ET AL.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT STATE OF WASHINGTON

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly held that this case involved a permissible domestic application of CERCLA, where the claims arise out of a hazardous waste site in the United States, where liability is limited to response costs and damages incurred in the United States, and where Teck's liability exists because it purposefully sent millions of tons of waste to the site.

2. Whether, consistent with this Court's decisions in *Walden v. Fiore*, 571 U.S. 277 (2014), and *Calder v. Jones*, 465 U.S. 783 (1984), the Ninth Circuit correctly upheld personal jurisdiction over Teck based on Teck's decades-long and intentional disposal of 400 tons of waste per day to a site in Washington State.

3. Whether a person may be held liable under CERCLA as having arranged for disposal of hazardous substances within the meaning of 42 U.S.C. § 9607(a)(3) when, without the involvement of another party, the person takes intentional steps to dispose of hazardous substances at a facility owned or operated by another party or entity.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Statutes

Other Authorities

Treatises

INTRODUCTION

Twelve years ago, Petitioner Teck Metals sought certiorari in this case on several of the issues it raises today. This Court called for the views of the Solicitor General, who responded that certiorari should be denied. The case is no more worthy of certiorari today.

In 2007, Teck predicted that the Ninth Circuit's application of CERCLA foreshadowed significant international disputes. No such disputes have materialized. The observation of then-Solicitor General Paul Clement in 2008 remains true today: "[T]he comity concerns invoked by petitioner are unusually weak here, because petitioner dumped millions of tons of slag into a river just upstream of the border." No. 06-1188, Brief For The United States As Amicus Curiae (CVSG Br.) 6-7.

Similarly, Teck claimed the Ninth Circuit's ruling created a conflict as to CERCLA "arranger liability." Not only was there no real conflict in 2007 (as the Solicitor General explained), Teck conspicuously fails to show that any such conflict has developed since.

Finally, the lower court's personal jurisdiction rulings pose no conflict with this Court's rulings. As General Clement observed previously: "petitioner's deliberate, 90-year discharge of millions of tons of hazardous substances into a river just upstream from the United States directly and foreseeably caused harmful effects in the United States." CVSG Br. 17. The extraordinary facts of this case dispel any notion

that exercising personal jurisdiction over Teck is unfair or is based on anything other than Teck's purposeful connection to the forum, as required by this Court's case law.

STATEMENT OF THE CASE

A. Factual Background

Teck Metals, Ltd., operates the world's largest lead and zinc smelting complex in Trail, British Columbia, ten miles north of the United States border. Smelting ore generates massive amounts of wastes, including "slag," which must be disposed of somewhere. For Teck, that somewhere was the Upper Columbia River. Over the past century, Teck disposed of slag into the River at an average rate of 400 tons per day—literally a mountain of slag containing thousands of tons of toxic metals. App. 96a-97a. Teck's slag and other wastes quickly traveled the short distance across the border and into the United States and now leach toxic metals into the environment, triggering application of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

Teck's use of the Upper Columbia River as its dumping ground was not happenstance. Teck located its smelter and engineered the disposal of its slag and other waste to take advantage of an undammed stretch of the river, which lies below the Teck smelters. App. 96a-99a. Teck used gravity and the river current to dispose of these wastes in the United States. *See* App. 96a, 98a-99a. Teck succeeded with its disposal plan, too. Today, the riverbed at Trail

is clean of Teck slag, App. 96a, but it is undisputed that ninety percent of Teck's slag—at least 8.7 million tons—is disposed of in the United States, where it fouls more than 100 miles of riverbed, lakebed, beaches, and shoreline. App. 97a; Ninth Circuit ER 23, 65, 85. Teck's waste is so prevalent that it forms massive shoreline deposits, such as one three miles into the United States that locals call "Black Sand Beach" (shown below in 2010).[1]

To ensure the river transported its slag away from Teck's property to the disposal site, Teck's engineers developed processes to convert the slag into smaller granuals. Ninth Circuit SER 14-17. As the court of appeals observed: "Without this transport

[1] General background on the site is available at https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=12125.

system, Teck would have soon been inundated by the massive quantities of waste it produced—which, it bears repeating, averaged some 400 tons per day." App. 16a-17a. Over the years, Teck officials repeatedly conceded that the company purposefully disposed of its waste in the United States. In 1991, Teck's Environmental Control Manager noted: "[W]e are in effect dumping waste into another country—a waste they classify as hazardous material." App. 103a. He noted that Teck was using Lake Roosevelt as a "free" and "convenient disposal facility." App. 103a-04a. As far back as 1981, Teck's Environmental Control Manager noted that the company faced legal exposure "if Americans ever find the time and money to do exhaustive research on the lake sediments in [Lake Roosevelt]." App. 102a. Thus, as the district court found, "for decades [Teck's] leadership knew its slag and effluent flowed from Trail downstream and are now found in Lake Roosevelt and, nonetheless, Teck continued discharging wastes into the Columbia River." App. 100a.[2]

Teck also knew, since at least the 1970s, that its waste leached toxic metals into the environment. App. 106a. Studies conducted over the following two decades by Teck and many others indicated that metals leached from slag are toxic to aquatic life. App. 106a-11a.

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[2] As early as the 1930s, reports to Teck described slag accumulations in the United States. App. 100a-01a. In 1981—the same year CERCLA took effect—a Teck risk analysis opined: "[t]he primary potential for environmental damage and subsequent claims [at Trail] is the discharge of pollutants to the Columbia River." App. 101a-02a (alterations in original).

B. Proceedings Below

1. Courts in 2004-06 rejected Teck's theory that the case was applying CERCLA extraterritorially, and Teck's strained reading of arranger liability

In 2004, two members of respondent Confederated Tribes of the Colville Reservation, Joseph A. Pakootas and Donald R. Michel, filed a complaint under CERCLA's citizen-suit provision, 42 U.S.C. § 9659(a)(1), seeking among other things a declaration that Teck was violating an EPA order requiring Teck to initiate investigation of the Upper Columbia River site. App. 180a. The State of Washington intervened as a plaintiff. Teck moved to dismiss the complaints, but the district court declined to do so. App. 179a-216a. The court found personal jurisdiction over Teck because the facts alleged in the complaints showed Teck's "dispos[al] of hazardous substances into the Columbia River [was] an intentional act expressly aimed at the State [of] Washington" that "causes harm which [Teck] knows is likely to be suffered downstream by" respondents. App. 185a-86a. The court also rejected Teck's claim that the case relied on impermissible extraterritorial application of CERCLA, and that Teck did not fall within the provision of CERCLA imposing liability on persons who arrange for disposal of waste. App. 199a-205a.

The district court certified its order for appeal under 28 U.S.C. § 1292(b). App. 216a. The court of appeals affirmed in the 2006 *Pakootas I* decision. App. 60a-92a. It held that the complaints did not

involve impermissible extraterritorial application of CERCLA. App. 72a-85a. Instead, the court found a domestic application of CERCLA because the focus of CERCLA is on cleanup of hazardous waste disposal sites in this country and assigning responsibility for such cleanups, so that CERCLA does not regulate disposal or discharge of pollutants outside the United States. App. 84a-85a. CERCLA also requires proof of a "release" of hazardous substances to the environment from a "facility" where hazardous substances have been placed, and the court held that both these triggers for applying CERCLA occurred domestically at the Upper Columbia River site. App. 74a-76a.

Pakootas I rejected Teck's theory that CERCLA imposes liability on persons who arrange to dispose of waste only if they act in conjunction with another person. *See* App. 85a. Reviewing CERCLA's "arrange-for-disposal" liability in 42 U.S.C. § 9607(a)(3), the court found that Teck is a "person who . . . otherwise arranged for disposal . . . of hazardous substances owned or possessed by" Teck at the contaminated "facility" (App. 86a): the Upper Columbia River/Lake Roosevelt site. App. 91a-92a.[3] (Teck did not challenge personal jurisdiction in that first appeal.)

[3] 42 U.S.C. § 9607(a)(3) imposes liability on "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 . . . owned or operated by another party or entity[.]"

Teck sought certiorari in 2007, raising the extraterritoriality and arranger liability issues it raises today. This Court denied certiorari after calling for the views of the United States. *Teck Cominco Metals, Ltd. v. Pakootas*, 552 U.S. 1095 (2008). The Solicitor General opposed review because "[t]here is no division among the circuits" and the application of CERCLA to Teck "lacks sufficient importance to warrant this Court's review at this time." CVSG Br. 6, 15. The United States emphasized that "this case involves a direct and compelling United States interest," CVSG Br. 16, and that Teck's slag "is clearly identifiable and directly attributable to" its actions, so CERCLA liability here does not "pave[] the way" for unmanageable suits over trans-border pollution, CVSG Br. 17-18. The Solicitor General also rebutted Teck's claim of conflict based on *American Cyanamid Co. v. Capuanu*, 381 F.3d 6 (1st Cir. 2004), the same case Teck relies on today. CVSG Br. 19.

2. The district court found Teck liable for response costs and natural resource damages under CERCLA

After remand, the State and Colville Tribes sought to recover from Teck damages to natural resources within the United States. The State and Colville Tribes are trustees designated by CERCLA to recover natural resource damages caused by the release of hazardous substances. *See* 42 U.S.C. §§ 9607(a)(4)(C), (f). They also sought "response costs" incurred while establishing Teck's liability.[4]

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[4] CERCLA allows the United States, States, and Indian Tribes to recover "costs of removal or remedial action" incurred. 42 U.S.C. § 9607(a)(4)(A). "Removal" and "remedial action" are

The district court divided the case into three phases. Phase I occurred in 2012, when the court held a trial on the elements of liability. Phase I determined that there has been a "release" of a "hazardous substance" from a "facility" and that Teck fell into one of CERCLA's four classes of "covered persons." App. 93a-131a; *see also* 42 U.S.C. § 9607(a)(1)-(4); *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 870-71 (9th Cir. 2001) (en banc). The court found each element proven, with Teck being a "covered person" under CERCLA § 107(a)(3) (42 U.S.C. § 9607(a)(3) ("arrange[d] for disposal" liability)). App. 124a-29a. The court also made detailed findings and concluded that it had personal jurisdiction over Teck. App. 96a-112a, 114a-21a. The court specifically found that "[e]ven if [plaintiffs] were required to prove Teck's intent to dispose of its wastes *particularly at the [Upper Columbia River] Site*, the plainly obvious power of the Columbia River for transport, the absence of slag stockpiling in the river at the point of discard, and Teck's belief and knowledge that some of its wastes had come to a point of repose in the United States, satisfies the inquiry." App. 128a (emphasis added). The court concluded: "It 'was not only the inevitable consequence, *but the very purpose*'" of Teck's disposal practices that its wastes would come to be located at the Upper Columbia River site. App. 129a (emphasis added).

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collectively defined as "response actions," which include "enforcement activities related thereto." 42 U.S.C. § 9601(25). "Enforcement activities" include litigation to establish CERCLA liability. *E.g.*, *United States v. Chapman*, 146 F.3d 1166 (9th Cir. 1998).

Phase II occurred in 2016, when the court held a trial and awarded response costs to the Tribes. App. 132a-71a. Teck had settled the State's claim for response costs. App. 8a. The court found that the actions for which the Tribes sought cost recovery met the definition of "remedial action," or were enforcement actions related to removal action. App. 153a-61a. The court entered a final judgment against Teck under Fed. R. Civ. P. 54(b) for those costs. App. 175-76a.

Phase III is yet to be scheduled, and will address proof and quantification of natural resource damages.

3. The Ninth Circuit affirmed personal jurisdiction and liability under CERCLA

Teck appealed the final judgment. Among its arguments, Teck challenged personal jurisdiction and argued that the district court erred in applying *Calder v. Jones*, 465 U.S. 783 (1984), or in the alternative that *Calder* was not satisfied because Teck did not "expressly aim" its waste discharges at Washington. App. 13a. The Ninth Circuit rejected both arguments. App. 13a-17a ("We have no difficulty concluding that Teck expressly aimed its waste at the State of Washington."). Teck also raised again two arguments rejected in *Pakootas I*: that the case involves an unlawful extraterritorial application of CERCLA, and that Teck cannot arrange for the disposal of hazardous substances without involving another person or entity. App. 35a n.13. Despite Teck's current assertion that "[m]uch had changed since the first appeal," Pet. 10, Teck identified no cases as

intervening changes in controlling authority to the Ninth Circuit. *See* Docket No. 18-1, at 68-71. The Ninth Circuit followed *Pakootas I* as law of the case and rejected Teck's theory that this involved an impermissible extraterritorial application of CERCLA. App. 35a n.13. The court then denied Teck's petition for panel rehearing and rehearing en banc, with no judge dissenting. App. 58a-59a.

THE PETITION SHOULD BE DENIED

A. The Court of Appeals' Rejection of Teck's Claim that CERCLA is Being Applied Extraterritorially Poses No Conflict with Decisions of this Court

Teck asks this Court to review whether the lower court allowed an "impermissible extraterritorial application of CERCLA." Pet. i. Teck asserts no conflict in the circuits on this issue (and there is none). Teck claims only that the decision below conflicts with two recent decisions, *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), and *RJR Nabisco, Inc. v. European Community*, 136 S. Ct. 2090 (2016). Those cases, however, involve statutes significantly different from CERCLA, and neither case involves facts like those here, where a foreign entity disposed of millions of tons of hazardous wastes in the United States.

1. CERCLA directs cleanup of real property contaminated with hazardous waste

"CERCLA imposes liability for the cleanup of sites where there is a release or threatened release of

hazardous substances into the environment." App. 72a (citing *Carson Harbor Vill., Ltd.*, 270 F.3d at 881). "CERCLA is not a regulatory statute," App. 72a, and there is no merit to Teck's premise that its liability for cleaning up its waste in the United States constitutes extraterritorial regulation.

Three conditions must be met before CERCLA liability applies. First, CERCLA requires a "facility" as defined in 42 U.S.C. § 9601(9) as a site where hazardous substances have been deposited. Teck does not challenge the Ninth Circuit's conclusion that "this case involves a domestic facility," i.e., the bed of the Columbia River in the United States. App. 74a. Second, CERCLA requires the "release" or "threatened release" of hazardous substances into the environment from the facility. App. 75a. Teck does not dispute that releases triggering the application of CERCLA occurred within the United States, again showing the case involves a domestic application of CERCLA. App. 75a. Third, CERCLA assigns liability for response costs and certain damages to "covered persons" as defined by statute. App. 76a. Teck is a covered person because it arranged for disposal of its waste at the facility. *See* 42 U.S.C. § 9607(a)(3) ("any person who by contract, agreement, or otherwise arranged for disposal . . . of hazardous substances owned or possessed by such person . . . at any facility"). Again, this element involves conduct that occurred primarily within the United States, because the facts established that Teck purposefully sent its waste to the site. App. 76a-85a, 96a-112a.

Teck, however, claims CERCLA is being applied to conduct that occurred within Canada. Teck's argument ignores the now-undisputed fact that

Teck located and operated its smelter nearly on the United States border and purposefully engineered its operations to transmit millions of tons of smelter waste directly to the Upper Columbia River site. App. 96a-112a, 115a-18a, 128a-29a. This disposal of waste away from its property to the site in the United States was intentional conduct by Teck. Teck's theory that it acted solely within Canada makes as little sense as a person shooting bullets from Canada into the United States describing such conduct as occurring wholly in Canada.[5]

Given these facts, and CERCLA's focus on cleaning up domestic real property, the Ninth Circuit correctly upheld application of CERCLA to Teck. Moreover, Teck's liability and CERCLA liability in general is fact-bound, so that the application of CERCLA to Teck has no immediate application beyond the facts of this case. *Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 610 (2009) ("the question whether § 9607(a)(3) liability attaches is fact intensive and case specific").[6]

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[5] As the United States explained in 2007, "'[t]he traditional example' is that 'when a malefactor in State *A* shoots a victim across the border in State *B*, State *B* can proscribe the harmful conduct.'" CVSG Br. 17 (quoting *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 922 (D.C. Cir. 1984).

[6] British Columbia's amicus brief also mischaracterizes the case as if it addresses whether CERCLA applies to businesses that operate "wholly" and "entirely" within Canada. The Province's concerns can be discounted because there is no suggestion in the decision below, or the facts presented, that CERCLA would apply to persons who operate wholly in Canada and do not send waste to a United States facility.

2. There is no tension between the Ninth Circuit decision and this Court's rulings in *Morrison* and *RJR Nabisco*

Teck seeks certiorari for its first question based on an alleged conflict with two recent rulings from this Court. Pet. i (citing *Morrison* and *RJR Nabisco*). No conflict exists because the laws and facts at issue in those cases differ significantly from the circumstances here, and in any event applying CERCLA here comports with the standards articulated in those cases.

Morrison addresses whether the Securities Exchange Act § 10(b) applies to misrepresentations made in connection with the purchase or sale of securities *traded only on foreign exchanges*. Attempting to regulate the purchase or sale of securities on foreign exchanges, however, is nothing like CERCLA. CERCLA requires the remediation of contamination of real property in the United States by assigning liability to persons who contaminated the property.

RJR Nabisco addresses whether predicate crimes for RICO liability can involve extraterritorial conduct, and whether a private RICO cause of action applies to damages suffered outside the United States. *RJR Nabisco*, 136 S. Ct. at 2099. Thus, *RJR Nabisco* involves applying United States law to overseas business transactions for purposes of RICO predicates or damages. Again, there is no comparison between construction of RICO predicates or damages and finding Teck liable under CERCLA for waste it sent to the United States. Indeed, in stark contrast to

RJR Nabisco, no one here seeks any damages that were incurred outside the United States, nor does CERCLA regulate predicate acts occurring wholly outside the United States. CERCLA imposes liability on Teck because it sent its waste to a site in the United States.

Despite the absence of any fair comparison in the facts or legal provisions, Teck claims that the Ninth Circuit "flouts" these cases. But there is no conflict between the Ninth Circuit's holding that this case involves domestic application of CERCLA and the analytical steps described in *Morrison* and *RJR Nabisco*. Both cases confirm that statutes are presumed to apply only within the United States absent clear indication of extraterritorial application. *Morrison*, 561 U.S. at 262-65; *RJR Nabisco*, 136 S. Ct. 2099. The Ninth Circuit did not violate this presumption; it held that CERCLA is *not* applied extraterritorially when it imposes liability on Teck for waste that it sent to the United States. App. 72a-85a. Thus, the facts of this case and that holding are readily distinguishable from cases involving a "prohibited extraterritorial application" of federal statutes, rejected in *Morrison*, 561 U.S. at 266.

The decision below also fits squarely within the second step described in *Morrison* and *RJR Nabisco*. "If the statute is not extraterritorial, then at the second step we determine whether the case involves a domestic application of the statute, and we do this by looking to the statute's 'focus.'" *RJR Nabisco*, 136 S. Ct. at 2101. "If *the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad*; but if the conduct

relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory." *RJR Nabisco*, 136 S. Ct. at 2101. (emphasis added). Under this second step, Teck's liability is based on a permissible domestic application because CERCLA focuses on "releases" of hazardous substances into the environment from such "facilities." App. 73a-76a. As just explained, it is undisputed here that both the "releases" and the "facility" are within the United States. *See supra* p. 11; App. 74a-75a. And Teck arranged to dispose of its wastes in the United States because it purposefully sent millions of tons of waste to the site. Teck's conduct did not merely involve discharge to a river in Canada; rather, Teck intentionally used the river to dispose of waste in the United States, just as it might have used a truck or conveyor belt to send waste to the site.[7]

Finally, there is no merit to Teck's complaint that the 2006 Ninth Circuit decision depends on an outdated "domestic effects" test and then allows the extraterritorial application of CERCLA. Pet. 14. First,

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[7] Teck equates CERCLA with other environmental laws, but ignores how CERCLA, as a remedial statute, does not regulate discharges of pollution like the Clean Water Act or RCRA. App. 72a, 84a. CERCLA concerns the cleanup of real property akin to the abatement of a nuisance or trespass. CERCLA liability thus focuses on the connection between "covered persons" and the contaminated facility and hazardous substances. *See* 42 U.S.C. § 9607(a)(1), (a)(2) (liable person's conduct of owning or operating a facility), (a)(3) (liable person's conduct of disposing of hazardous substances at a facility), (a)(4) (conduct of accepting hazardous substances for transportation to be disposed of or treated at a facility).

the Ninth Circuit expressly concluded that this case involved a domestic application of CERCLA. Second, when read in context, the Ninth Circuit did not rely on "domestic effects" to employ an analysis inconsistent with *Morrison* or *RJR Nabisco*. Rather, it used the phrase to reject Teck's reliance on *Small v. United States*, 544 U.S. 385 (2005). *See* App. 77a-81a. Teck no longer relies on *Small* and the Ninth Circuit's 2007 discussion of that case is not a holding that conflicts with cases that presume against extraterritorial application of statutes, while allowing domestic application when "the conduct relevant to the statute's focus occurred in the United States[.]" *RJR Nabisco*, 136 S. Ct. at 2101.

3. Imposing liability on Canadian entities that send waste to facilities in the United States creates no conflict with Canadian or provincial law

Teck and its amici argue that imposing CERCLA liability here creates a risk of conflict between United States and Canadian laws. CERCLA liability creates no such concern, and Teck conspicuously fails to identify any Canadian law that conflicts with imposing liability on Teck for cleaning up waste it sent to the site. The Solicitor General's observation in 2007 remains true today: "The fact that the comity question in this case is apparently arising now for the first time, notwithstanding the decades-old potential for disputes concerning cross-border pollution, strongly suggests that it lacks the recurring importance that petitioner attributes to it." CVSG Br. 15.

For at least three reasons, imposing liability on Teck presents no important question of comity. First and most obviously, there is no possible conflict with analogous Canadian cleanup laws, because Canada has no jurisdiction to investigate and clean up real property in the United States. As a result, this case differs sharply from *Morrison*, which dealt with an extraterritorial application of the Securities Exchange Act § 10(b). There, "[t]he probability of incompatibility with the applicable laws of other countries" made it obvious that Congress would not have intended to "regulate their domestic securities exchanges and securities transactions[.]" *Morrison*, 561 U.S. at 269. Here, other countries cannot regulate cleanup of contaminated property in the United States.

Second, CERCLA does not regulate operation of Teck smelters or discharges. App. 72a, 84a. Teck presumably has several options for disposing of its waste in Canada, all of which would be governed by Canadian law. Thus, application of CERCLA liability poses no possibility of interfering with Canadian regulation of Teck operations. But when Teck intentionally sends its waste into the United States, it is a basic tenet of international law that the United States can address that harm.[8]

Third, no Canadian law gives, or could give, a Canadian company immunity for waste sent to the United States.

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[8] Am. Law Inst., *Restatement (Third) of Foreign Relations Law of the United States* § 402(1)(c) (1987) ("[A] state has jurisdiction to prescribe law with respect to . . . conduct outside its territory that has or is intended to have substantial effect within its territory[.]").

In short, Teck has shown no significant change in the law since this Court denied certiorari on this issue in 2008. Millions of tons of waste that Teck purposefully sent to Washington stand witness to the Ninth Circuit's conclusion that this case does not involve the extraterritorial application of CERCLA. The application of CERCLA to Teck for that waste poses no important issue of international comity.

B. Personal Jurisdiction over Teck Poses No Conflict with Decisions of this Court and Creates no Split Among the Circuits

Teck's purposeful dumping of hazardous waste into Washington establishes personal jurisdiction in Washington, and the rulings below on that point present no issue that warrants this Court's review. Teck's two reasons for review of its second question presented do not withstand scrutiny.

First, Teck asserts that *Walden v. Fiore*, 571 U.S. 277 (2014), fundamentally altered the personal jurisdiction landscape in a way that renders *Calder v. Jones*, 465 U.S. 783 (1984), a near nullity. *Walden* did no such thing. To manufacture a conflict with *Walden,* Teck misconstrues the decision below and ignores factual findings that Teck intended that its wastes end up in Washington rather than at Teck's facility in Canada. App. 96a-112a. These findings make the exercise of personal jurisdiction over Teck fully consistent with *Walden*'s core holding that defendants must have acted to create a meaningful connection to the forum state.

Second, Teck tries to manufacture a split among the circuits over the scope of *Calder* with regard to relying on knowledge of harms in a forum

state. Even if such a split existed, the argument is irrelevant here. As the district court found and the decision below relied upon, jurisdiction is not based merely on Teck *knowing* about potential harms in Washington from discharging slag and other contaminants into the river. Teck *deliberately intended* to use Washington as a waste repository, and thus intended to create a meaningful connection with the forum. Teck's additional assertion of a split over whether *Calder* applies to intentional torts codified into law—such as trademark infringement or CERCLA damages—similarly fails because the cases show no such split.

1. The Ninth Circuit's decision is fully consistent with *Walden* and correctly applies *Calder*

Teck claims that the decision below "breaks" with *Walden*, misconstrues *Calder*, and improperly relies on aspects of *Calder* that *Walden* rejected. Teck is wrong on all counts, and there is nothing for this Court to correct on certiorari.

Walden reversed a determination that Nevada courts had specific personal jurisdiction over a Transportation Security Administration (TSA) agent who seized cash and drafted a probable cause affidavit *in Georgia* against a Nevada couple traveling through the Atlanta airport. *Walden*, 517 U.S. at 279. Far from rejecting *Calder*, *Walden* embraced *Calder* while clarifying that *Calder* does not permit a court to merely focus on the effects felt in the forum state. Under *Walden* and *Calder*, the personal jurisdiction analysis looks at the relationship between the defendant, the litigation, and the forum to determine

whether the defendant's actions "form[] a contact with the forum state" that connects the defendant to the forum "in a meaningful way." *Walden*, 517 U.S. at 290. Because the Nevada plaintiffs failed to establish any contacts between the TSA agent and Nevada other than the alleged effects felt by the plaintiffs in Nevada, personal jurisdiction was lacking. *Id.* at 291.

The decision below is entirely compatible with *Walden*. Recognizing that the relevant actions for purposes of the personal jurisdiction analysis are those directed "at the [forum] state" and not the plaintiff, the decision below undertook a careful examination of Teck's connection to Washington.[9] App. 17a. The decision below found it "inconceivable" that Teck was unaware its wastes were aimed at Washington, citing the district court's factual findings that Teck's management knew it was "dumping waste into another country" by using the Columbia River (and Washington) as a "free" and "convenient disposal facility." App. 16a. The court also cited the "massive" scale of Teck's Washington-directed discharges, where it sent 400 tons of waste per day to the Upper Columbia site, and the fact that Teck's facilities would have been "inundated" by these wastes if Teck had not sent them to Washington. App. 17a, 16a. Far from offending "traditional conception[s] of fair play and substantial justice" (App. 17a (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (alteration in original)), the decision below correctly noted that "there would be no fair play and no

[9] While the forum state is also a plaintiff in this case, the decision below analyzed the impacts to Washington as a forum, not as a plaintiff. *See supra* pp. 17-19.

substantial justice if Teck could avoid suit in the place where it deliberately sent its toxic waste." App. 17a. Indeed, if Teck's decades-long history of intentionally sending waste to Washington as a critical part of its business plan fails to connect Teck "in a meaningful way" to the forum state, it is difficult to envision what would.

Nor is there any conflict with *Calder*. *Calder* involved a *National Enquirer* article written in Florida but published nationally and concerning an actress residing in California. *Calder*, 465 U.S. at 787. In affirming personal jurisdiction over the defendants in California, this Court focused on the contacts between defendants and the forum state, including the large California circulation of the article, the use of California sources for the article, and the fact that the "brunt" of the reputational impact occurred in California. *Id.* at 788-89. Because California was the focal point of both the story and the harm suffered, jurisdiction was proper in California "based on the 'effects' of [the] Florida conduct in California." *Id.* at 789. Here, just as the Florida authorship of an article directed at California gave rise to meaningful contact with California, the discharge of waste in Canada intentionally directed at Washington gives rise to meaningful contact with Washington.

Teck claims the Ninth Circuit decision conflicts with *Calder* because it did not expressly acknowledge that the defendant's connection to California in *Calder* was based on a libel cause of action, which is not present here. Pet. 23-24. This distinction makes little sense. As Teck has stipulated, its slag and liquid wastes released metals into the sediments and water column of the Columbia River *in Washington*, just as

the libel committed in California caused harm in California. And like that libel in *Calder*, CERCLA can only address those in-forum releases by imposing cleanup and natural resources damage liability. Just as the "nature" of a tort means that a defendant's libelous conduct occurs in the state in which the material is published, the "nature" of a CERCLA action means that the defendant's actionable conduct occurs in the state where it deposited its hazardous substances. Teck's management knew that it was "dumping waste into another country—a waste that they classify as hazardous material" and that Teck was using Lake Roosevelt as a "free" and "convenient disposal facility." App. 103a-04a. Under the facts found below, Teck cannot feign surprise that it has been haled into court in Washington to be held accountable for harms caused there.

Finally, Teck erroneously claims that the decision below relies solely upon Teck's "knowledge" that its wastes would end up in Washington. That argument seriously mischaracterizes the ruling below and defies the facts found by the district court. Personal jurisdiction in this case is based on more than Teck's mere knowledge that its wastes went downstream. The findings establish that Teck purposefully sent its wastes to Washington, optimizing its processes at the Trail smelter to better use the river to carry slag to Washington. App. 96a-112a, 115a-18a, 128a-29a; Ninth Circuit SER 14-17. The court found that Teck did so because it knew it otherwise would have been "inundated by the massive quantities of waste it produced[.]" App. 16a-17a. As the district court concluded: "[i]t was not only the inevitable consequence, *but the very*

purpose" of Teck's disposal practices that its wastes would come to be located at the Upper Columbia River site. App. 129a (emphasis added) (internal quotation marks omitted).

In short, exercising personal jurisdiction under these facts is well within the framework of this Court's cases. Moreover, the facts here are extraordinary, not paradigmatic, so that personal jurisdictional here is uniquely fact-bound and does not warrant review.

2. There is no circuit split

Teck also claims that review is necessary to resolve a circuit split over the application of *Calder*'s "effects test." The decision below creates no tension for this Court to resolve.

Teck argues that the Second, Fifth, and Seventh Circuits have rejected that a defendant's knowledge of effects on a plaintiff in the forum state is sufficient to establish personal jurisdiction under *Calder*. That comparison is false because the decision below did not find jurisdiction based on Teck's knowledge that its waste would affect people in Washington. As set out above, while Teck undoubtedly knew of the harms its waste could cause in Washington, the crux of the Ninth Circuit's personal jurisdiction analysis concerns how Teck purposefully targeted and "deliberately sent" its wastes to Washington. App. 17a, 18a-19a. Thus, the Circuit's decision is squarely within the most consistent reading of *Calder* among the circuit courts: that personal jurisdiction exists when a defendant expressly aims an intentional action at the forum state, establishing a meaningful connection between the defendant and the forum. There may someday be

a split among circuits as to whether knowledge of harms alone is enough to qualify as "express aiming," but the facts of this case do not present that issue or create that conflict.

Teck also asserts a circuit split over whether *Calder* can ever apply outside of common law intentional torts. Again, no split exists. Courts are unified that *Calder* requires an intentional *act*. But, the case law also makes clear that courts generally agree that the intentionality of a defendant's actions is key to personal jurisdiction, not the label or common law pedigree of the claim.

For example, courts adjudicating trademark infringement actions—a common law tort now codified in the Lanham Act, 15 U.S.C. §§ 1051-1141n —commonly invoke *Calder* for purposes of personal jurisdiction. *See, e.g.*, *Ariel Invs., LLC v. Ariel Capital Advisors LLC*, 881 F.3d 520 (7th Cir. 2018); *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384 (8th Cir. 1991) (same). The Ninth Circuit applied *Calder* to statutory claims of unauthorized use of an image. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9th Cir. 2004). The Tenth Circuit analyzed both *Calder* and *Walden* in the context of a strict liability claim. *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895 (10th Cir. 2017). And the Federal Circuit Court of Appeals has applied *Calder* in patent infringement cases. *Avocent Huntsville Corp. v. Aten Int'l Co., Ltd.*, 552 F.3d 1324 (Fed. Cir. 2008). These cases and others show that courts consistently view the crux of *Calder*'s analysis as the defendant's active and intentional targeting of a forum state, in contrast to mere untargeted negligence. There is no reason *Calder* should not

apply similarly to a CERCLA action, which represents the codification of numerous common law claims that frequently involve intentional actions, including ultrahazardous activity, nuisance, and trespass. H.R. Rep. No. 96-1016, Part I, 96th Cong., 2d Sess. 62, *reprinted in* 1980 U.S.C.C.A.N. 6119, 6139 (a primary goal of CERCLA was to clarify and codify multiple "long-standing common law theories as they relate to liability for damages caused by waste disposal activities" (statement by Rep. Gore)).

Finally, Teck claims that the Third and Eleventh Circuits are in conflict with the decision below, which is not the case. While these circuits have held that *Calder* applies to intentional tort cases, neither circuit has been presented with the question whether *Calder* applies in cases involving intentional acts analogous to intentional torts.[10]

In sum, Teck's claims of a circuit split regarding whether the unique actions of Teck provide a basis for personal jurisdiction is not based on a fair reading of case law. Thus, Teck's second question presented does not warrant this Court's review.

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[10] Teck quotes language from *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339 (11th Cir. 2013), stating that the "effects test" applies to intentional torts. But this statement is made in the context of comparing intentional torts to personal jurisdiction for negligence claims and does not foreclose application to a CERCLA claim. *Id.* at 1357 n.11. For its part, the Third Circuit has applied *Calder* only in an intentional tort context, but has never been asked to determine whether codified intentional torts could apply *Calder*'s jurisdictional framework.

C. Teck's Challenge to Application of CERCLA Arranger Liability Strains the Text of CERCLA and Asserts Conflict Where None Exists

CERCLA ensures that "those actually 'responsible for any damage, environmental harm, or injury from chemical poisons [may be tagged with] the cost of their actions[.]" *United States v. Bestfoods*, 524 U.S. 51, 55-56 (1998) (first alteration in original) (quoting S. Rep. No. 96-848). To do this, CERCLA establishes four broad, overlapping categories of liability for "covered persons." *See* 42 U.S.C. § 9607(a)(1)-(4). Among these, CERCLA imposes responsibility on any person who "by contract, agreement, or otherwise" arranged for the disposal or treatment of hazardous substances "owned or possessed by such person, by any other party or entity" at a facility owned or operated by another party. 42 U.S.C. § 9607(a)(3).

Teck's parsing of this subsection does not present a significant question for the Court to resolve. First, contrary to Teck's suggestion, the ruling below is fully consistent with this Court's analysis in *Burlington Northern & Santa Fe Ry. Co.*, 556 U.S. 599. Second, there is no conflict between this case and the decisions of any other circuit, either with respect to the specific question presented (which no other circuit has addressed) or the way in which § 9607(a)(3) is construed, which has not been dispositive in any other case. Third, on the merits, the Ninth Circuit's construction of § 9607(a)(3) gives full effect to all language of that section while better comporting with the structure and aim of CERCLA. In contrast, Teck's

reading inexplicably excuses a waste generator who arranged to send millions of tons of waste to the facility in question. Finally, twelve years have passed since *Pakootas I* without any evidence that the Ninth Circuit's holding caused a "drastic expansion" of CERCLA liability.

1. The decision below poses no tension with this Court's decisions

In *Burlington Northern*, this Court addressed whether intent to dispose or treat hazardous substances is necessary for liability under the arranger standard. *Burlington Northern*, 556 U.S. at 609-13. To decide that question, the Court examined what it means to "'arrang[e] for' disposal of a hazardous substance," and gave "the phrase its ordinary meaning." *Id.* at 610-11 (alteration in original). The Court held that "[i]n common parlance, the word 'arrange' *implies action directed to a specific purpose*. See Merriam-Webster's Collegiate Dictionary 64 (10th ed. 1993) (defining 'arrange' as '*to make preparations for: plan*[;] . . . to bring about an agreement or understanding concerning')." *Id.* (first alteration ours) (emphases added). Therefore, "under the plain language of the statute, an entity may qualify as an arranger under § 9607(a)(3) *when it takes intentional steps to dispose of a hazardous substance*." *Id.* at 611 (emphasis added).

The ruling below is entirely consistent with the construction of "arrange for disposal" in *Burlington Northern*. Teck arranged for disposal of its waste under the ordinary meaning of the phrase: it "made preparations for" and undertook "action directed to a specific purpose." *Id.* Teck "intentionally"

used engineered outfalls and the river to dispose of its waste in the bed of the Upper Columbia River and Lake Roosevelt in the United States (App. 116a-17a, 128a-29a), so there is no question that Teck had the intent to dispose required in *Burlington Northern*. And, as found by the district court, Teck's intent to dispose at that location reflects a purposeful design, not mere knowledge that pollution might leak into the environment. *Burlington Northern*, 556 U.S. at 612-13; App. 128a-29a.

To claim there is "tension" where none exists, Teck asserts that *Burlington Northern* "assume[s] a transaction between two parties." Pet. 32-33. Not so. In *Burlington Northern*, the disposal involved two parties, with the Court describing the circumstances under which a manufacturer's sale of a commercial product to a distributor might give rise to liability. Given those facts, it is wholly unremarkable that the Court did not discuss a single party who arranges for disposal. There is, however, no holding in *Burlington Northern* that § 9607(a)(3) excludes parties that dispose of their waste by making arrangements that do not involve another party.[11]

As *Burlington Northern* holds, arranger liability is highly fact-dependent. *Burlington Northern*, 556 U.S. at 610. As a result, the liability

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[11] Teck also claims *United States v. Cello-Foil Products, Inc.*, 100 F.3d 1227 (6th Cir. 1996) "assum[es] that arranger liability involves some kind of transaction." Pet. 35. Like *Burlington Northern*, *Cello-Foil* reached no holding to that effect because *Cello-Foil* involved two parties and the issue was whether the liable party intended to dispose of wastes when conducting its transaction with the other party. *Cello-Foil*, 100 F.3d at 1231-32.

ruling in *Burlington Northern* does not present a conflict with the distinguishable and unique facts that make Teck liable.

2. There is no circuit split on the issue presented by this case

Teck admits there is no real conflict among the circuits because "[n]o other circuit has answered the precise question of whether arranger liability requires that the defendant arrange with some 'other party or entity.'" Pet. 35. To be clear: the Ninth Circuit is the *only* circuit to address the claim that a party who arranges to dispose of its own waste on someone else's property fits the statutory phrase "arrange[] for disposal" in § 9607(a)(3).

To claim a conflict, Teck cites cases discussing § 9607(a)(3) in different contexts than presented here, such as by focusing on whether the alleged arrangers "owned or possessed" the waste at issue. No case adopts a construction of § 9607(a)(3) that rejects liability for a party that arranges to dispose of its own waste on the land of another. And in no case was a court's construction of CERCLA § 107(a)(3) outcome-determinative.

In *American Cyanamid Co.*, 381 F.3d 6, which Teck cites as proof of a split, the court considered whether waste "brokers" who never owned or took possession of waste were liable under the arranged-for-disposal provision. After describing two potential constructions of § 9607(a)(3), the opinion summarily states that "disposal or treatment must be performed by another party or entity[.]" *Id.* at 24. This statement is dictum and had no bearing on the outcome for two reasons. First, the case involved transactions among

multiple parties, so the court had no call to address a party like Teck. *See American Cyanamid Co.*, 381 F.3d at 10. The court's statement about "another party" thus made no difference to the result. Second, applied literally, the court's statement would mean that an arranger must always "own or possess" the hazardous substances being disposed. But, that would mean the brokers in *American Cyanamid* would *not* be liable, since they never owned or possessed the subject waste. Seeing that CERCLA would then be "subject to a loophole through which brokers and middlemen could escape liability," the court employed the fiction that brokers took "constructive possession" of the waste. *Id.* at 25. *American Cyanamid* thus reached the same result that presumably would be reached under the Ninth Circuit's reading of § 9607(a)(3). As noted by the United States in response to Teck's 2007 petition: "The First Circuit's imposition of arranger liability in *American Cyanamid* in no way conflicts with the court of appeals' determination that, if the allegations of respondents' complaints are true, petitioner is also liable as an arranger under the far different circumstances of this case." CVSG Br. 19.[12]

The other cases Teck cites are similarly inapposite. Teck cites *Morton International, Inc. v. A.E. Staley Manufacturing Co.*, 343 F.3d 669

[12] Although Teck projects onto *American Cyanamid* a supposed conflict, no other court of appeals has addressed the alternate readings of § 9607(a)(3) noted by *American Cyanamid* and *Pakootas I*. One district court mentions the subject in dicta, adding that the Ninth Circuit's interpretation "serves [CERCLA's] purpose better than the First Circuit's." *MEMC Pasadena, Inc. v. Goodgames Indus. Sols., LLC*, 143 F. Supp. 3d 570, 580 (S.D. Tex. 2015).

(3d Cir. 2003), and *United States v. Vertac Chemical Corp.*, 46 F.3d 803 (8th Cir. 1995), for the proposition that arranged-for-disposal liability requires that the hazardous substances be "owned or possessed" by the person who arranged for the disposal. Pet. 35-36. This point, however, is at least one step removed from the issue here, because there is no dispute that Teck owned or possessed the waste. And in any case, the allegation that an "arranger" has to own or "possess" is not determinative in *Morton* or *Vertac*. Those cases more properly turn on the arranger liability standard later affirmed by *Burlington Northern*—whether the alleged arranger had taken "intentional steps to dispose of a hazardous substance"—not a bright-line requirement that every person liable under § 9607(a)(3) must have "owned or possessed" the waste. *See Morton*, 343 F.3d at 677-79, 681-83 (focusing on whether the defendant had knowledge of and control over waste disposal); *Vertac*, 46 F.3d at 811 (focusing on United States' "sporadic and minimal" involvement in operations of an Agent Orange producer); *cf. Burlington Northern*, 556 U.S. at 610-12.

Teck's asserted conflict amounts to little more than speculation that another circuit might someday reject liability where a single actor arranges for disposal of its waste at a facility owned and operated by another. Or, that the Ninth Circuit might, in some future case, find § 9607(a)(3) liability in a case where the liable party did not own or possess waste and other circuits disagree. Certiorari is not warranted to resolve these hypothetical conflicts.

3. The Ninth Circuit ruling reflects a common sense, textually sound approach to § 9607(a)(3)

Teck and its amici accuse the Ninth Circuit of rewriting CERCLA. But it is Teck that seeks to rewrite the statute. The reading encouraged by Teck and amici would render large portions of the statutory text superfluous while creating absurd gaps in CERCLA's liability coverage. These strained attempts to avoid CERCLA's remedial aim and the text of § 9607(a)(3) do not warrant review.

Section 9607(a)(3) assigns liability to any person who "by contract, agreement, *or otherwise* arranged for disposal . . . of hazardous substances." (Emphasis added.) Teck's argument conflates Congress's intent to ensure that waste disposers could not contract away their liability by using a second party with an intent to limit the reach of the statute to two-party disposal arrangements. That argument, however, leads to two incongruities.

First, it gives no meaning to the words "or otherwise arranged" for disposal. Because every two-person transaction to dispose of waste would involve some form of contract or agreement, the phrase "or otherwise arranged" captures any other method of disposal. One amicus downplays this nullification by citing to dictum in *United States v. Cello-Foil Products, Inc.*, 100 F.3d 1227, 1231 (6th Cir. 1996), to suggest that "otherwise arranged" must be read narrowly as covering only synonyms to contracting. That dictum still leaves the phrase doing no work. By contrast, the Ninth Circuit's reading gives effect to "or otherwise" so liability attaches no matter how one

arranged for disposal, whether by agreement with another or by using engineers and a river to deliver the waste to its intended repository. This reading, moreover, is consistent with the Third Circuit view that "by including 'or otherwise' after 'by contract [or] agreement,' *Congress expanded the means by which a party could possibly 'arrange for' the treatment or disposal of hazardous substances* . . . . We think that this expansive list of means indicates that *Congress intended this category of PRP to be broadly construed*." *Morton*, 343 F.3d at 676 (first alteration in original) (emphases added).[13]

Second, Teck's interpretation means "that a generator of a hazardous substance, which itself owned and possessed the substance, determined how it would dispose of the substance, was in the best position to know the substance's toxicity and characteristics, and decided how the material would be disposed of, would escape liability" by engaging in unilateral disposal. Michael J. Robinson-Dorn, *The Trail Smelter: Is What's Past Prologue? EPA Blazes a New Trail for CERCLA*, 14 N.Y.U. Envtl. L.J. 233, 287 (2006). Excluding liability for an entire class of persons who take "intentional steps to dispose of a

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[13] Teck's reading is illogical for other reasons, too. It means that an alleged "arranger" must always involve another person, which could eliminate liability for the final person in a transactional chain. *American Cyanamid*, 381 F.3d at 10. It makes the phrase "or arranged with a transporter for transport for disposal or treatment" redundant because arrangement with a transporter is already an arrangement with an "other party or entity." And, as noted by the Ninth Circuit, Teck's reading does not square with the fact that two commas off-set the phrase "by another party or entity." *See* App. 86a, 88a.

hazardous substance," *Burlington Northern*, 556 U.S. at 611, is incompatible with CERCLA's "sweeping" liability scheme. *See generally Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 21 (1989) (plurality op. of Brennan, J.), *overruled on other grounds*, *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); Robinson-Dorn, 14 N.Y.U. Envtl. L.J. at 288 n.287 (citing legislative history of concern with midnight dumpers).

Amici seek to avoid this stark problem by arguing that a generator who disposes of waste on someone else's property may be liable as an "owner or operator" under § 9607(a)(2). Amici US Chamber 19 n.10; *see also* Pet. 31 n.4. But that is no reason to gut § 9607(a)(3) and allow midnight dumpers to avoid liability. At most, it is an additional or alternative reason for holding Teck liable as an operator of the bed of the Columbia River and Lake Roosevelt, which it purposefully used as its disposal facility.[14]

4. This case does not represent a significant change in law

Teck's amicus claims the Ninth Circuit's decision "drastically expanded" CERCLA liability. Amici US Chamber Br. 11. But Neither Teck nor its

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[14] *Bestfoods* observed that operator liability may encompass "a saboteur who sneaks into [a] facility at night to discharge its poisons," because such persons exercise direct control over polluting activity on the property. *Bestfoods*, 524 U.S. at 65; *see also American Cyanamid*, 381 F.3d at 23. The district court did not address operator liability in Phase I, *see* App. 121a-30a, but the Ninth Circuit left the door open to such liability for Teck in *Pakootas I*, App. 85a n.19, as did the district court denial of Teck's initial motion to dismiss, App. 204a.

amici cite a *single case* since *Pakootas I* that supports their dire projections of "expanded" arranger liability for single-party disposers or non-owners/possessors of waste.

With respect to unilateral disposers, it is difficult to understand how the Ninth Circuit's decision "expands" liability when Teck and amici agree that CERCLA's overlapping liability for owners, operators, and transporters covers situations where a party itself disposes of waste on another's land. Pet. 31 n.4; Amici US Chamber Br. 19 n.10. More than a decade ago, the Solicitor General observed that "the arranger-liability question presented here seldom has practical significance because, if a party is liable as an arranger on the theory adopted by the court of appeals, it ordinarily will also be liable as an owner, operator, or transporter." CVSG Br. 19-20. Given the utter absence of other "single arranger cases" before and after *Pakootas I*, this case literally presents a one-off situation that does not warrant this Court's review.

With respect to liability in circumstances where a purported arranger does not strictly own or possess the waste, that situation was presented fifteen years ago in *American Cyanamid*, which both Teck and amici cite with approval. *American Cyanamid*, 381 F.3d at 25 (holding a non-owning or possessing waste broker liable). Further, amici fail to acknowledge that this Court in *Burlington Northern* resolved their concern of "opening up liability to any number of third parties who may have been tangentially involved in causing wastes to be disposed of." Amici US Chamber 13. Under that case, a party must take "intentional steps to dispose of a hazardous substance" to be liable. *Burlington Northern*, 556 U.S. at 611. This is true

whether the party is acting alone or in concert with another, and whether it owns or possesses the waste in question.

CONCLUSION

The Petition should be denied.

RESPECTFULLY SUBMITTED.

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