



**The 2009 Case Law,  
Regulatory and Legislative Update  
CERCLA/RCRA**

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**Joseph G. Maternowski**  
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# Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)



## Cost Recovery and Contribution

- ***U.S. v. Burlington Northern & Santa Fe***
- *Sycamore Industrial Park Assocs. v. Ericsson, Inc.*
- *United States v. Capital Tax Corp.*
- *Action Mfg. Co., Inc. v. Simon Wrecking Co.*
- ***Pakootas v. Teck Cominco Metals, Ltd.***
- *Raytheon Aircraft Co. v. United States*
- *United States v. Kramer*

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\*\* AGRICULTURAL CHEMICALS \*\*



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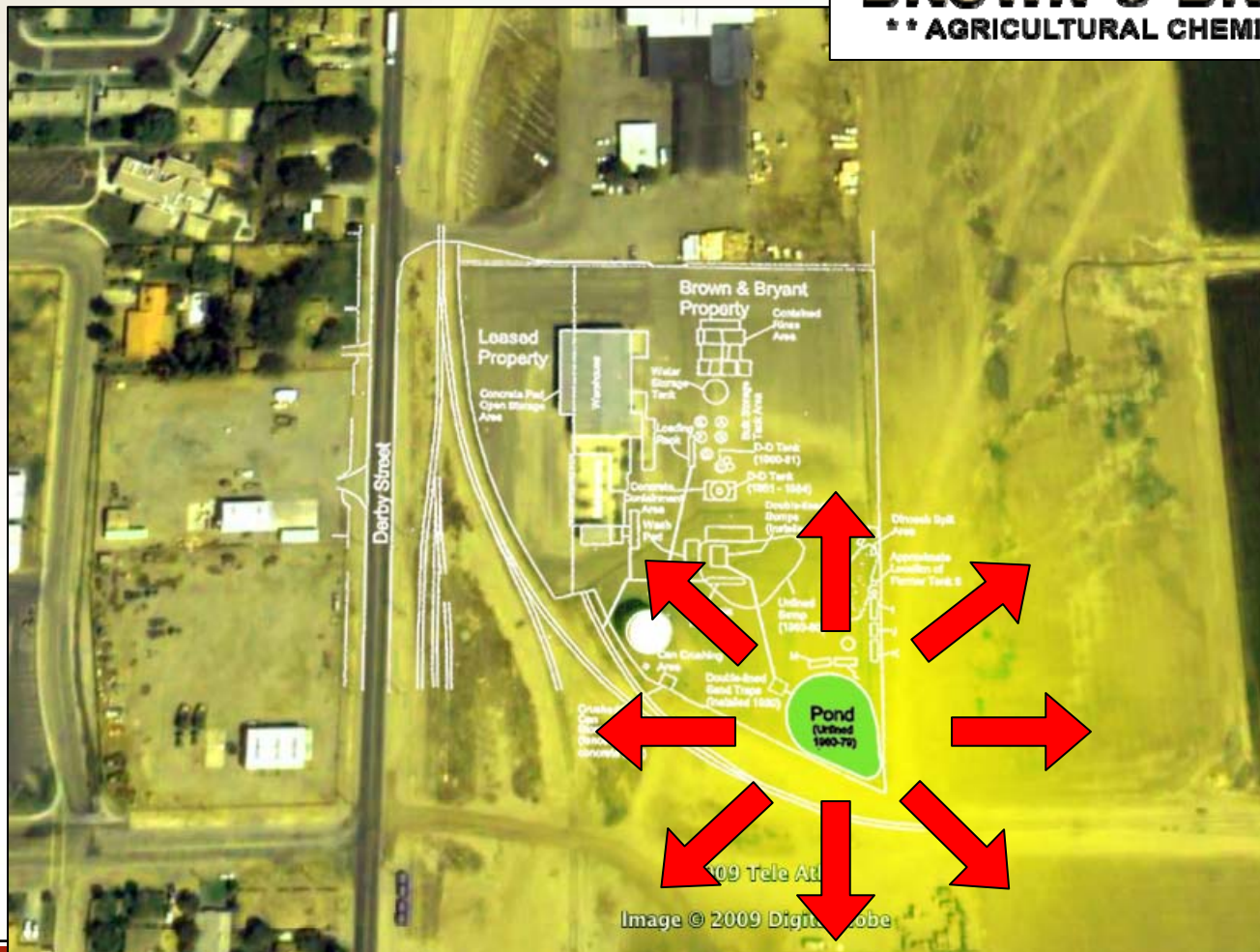


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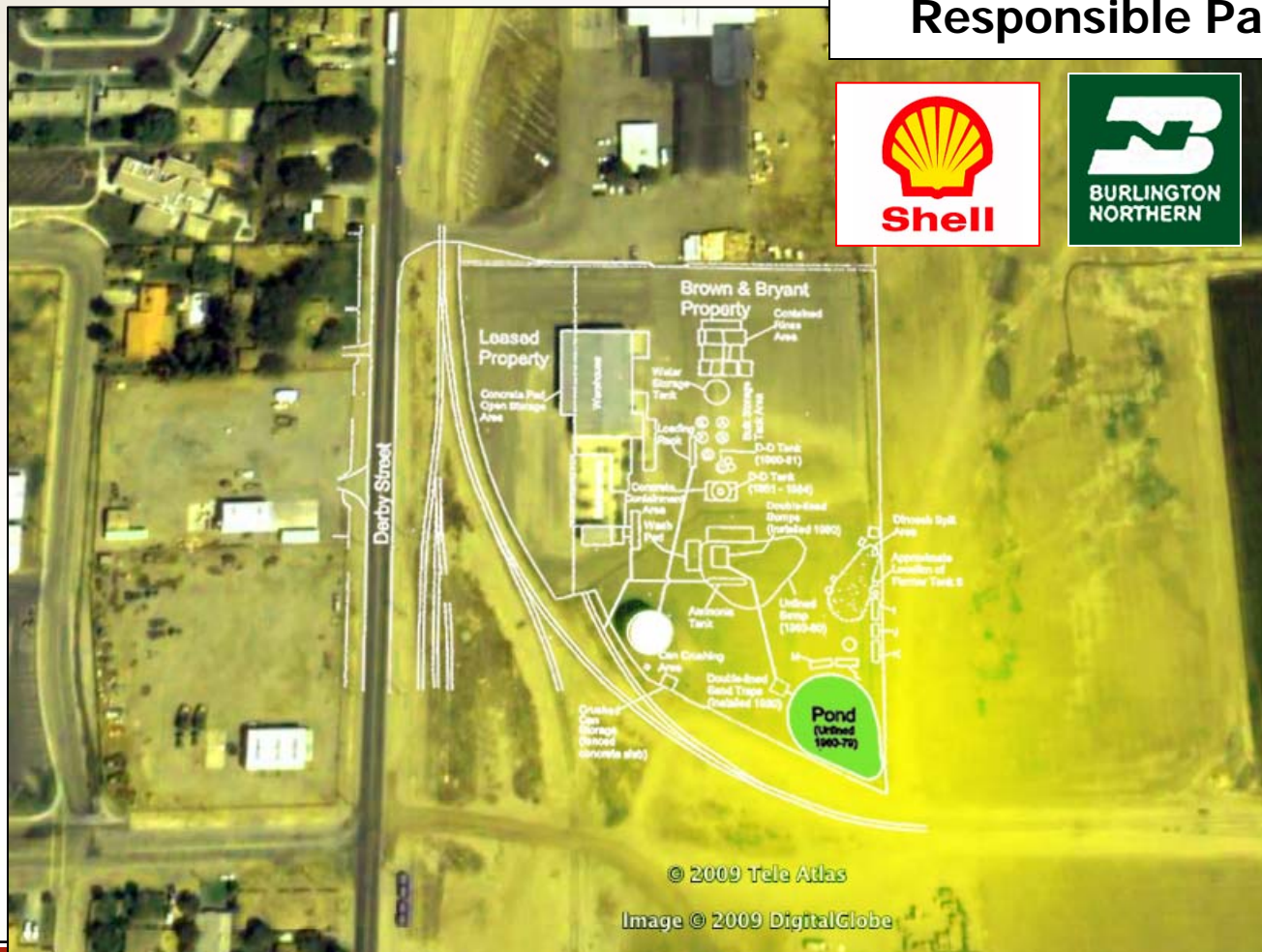


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## Cost Recovery and Contribution

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**PRP – Potentially  
Responsible Parties**



# Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)



## Cost Recovery and Contribution

- ***U.S. v. Burlington Northern & Santa Fe***  
Parties jointly and severally liable unless they can prove apportionment
- ***Sycamore Industrial Park Assocs. v. Ericsson, Inc.***  
Abandonment in place not considered CERCLA/RCRA "disposal"
- ***United States v. Capital Tax Corp.***  
State law controls in deciding ownership of a property for CERCLA
- ***Action Mfg. Co., Inc. v. Simon Wrecking Co.***  
Transporter liability if transporter "actively participated" in selection of site
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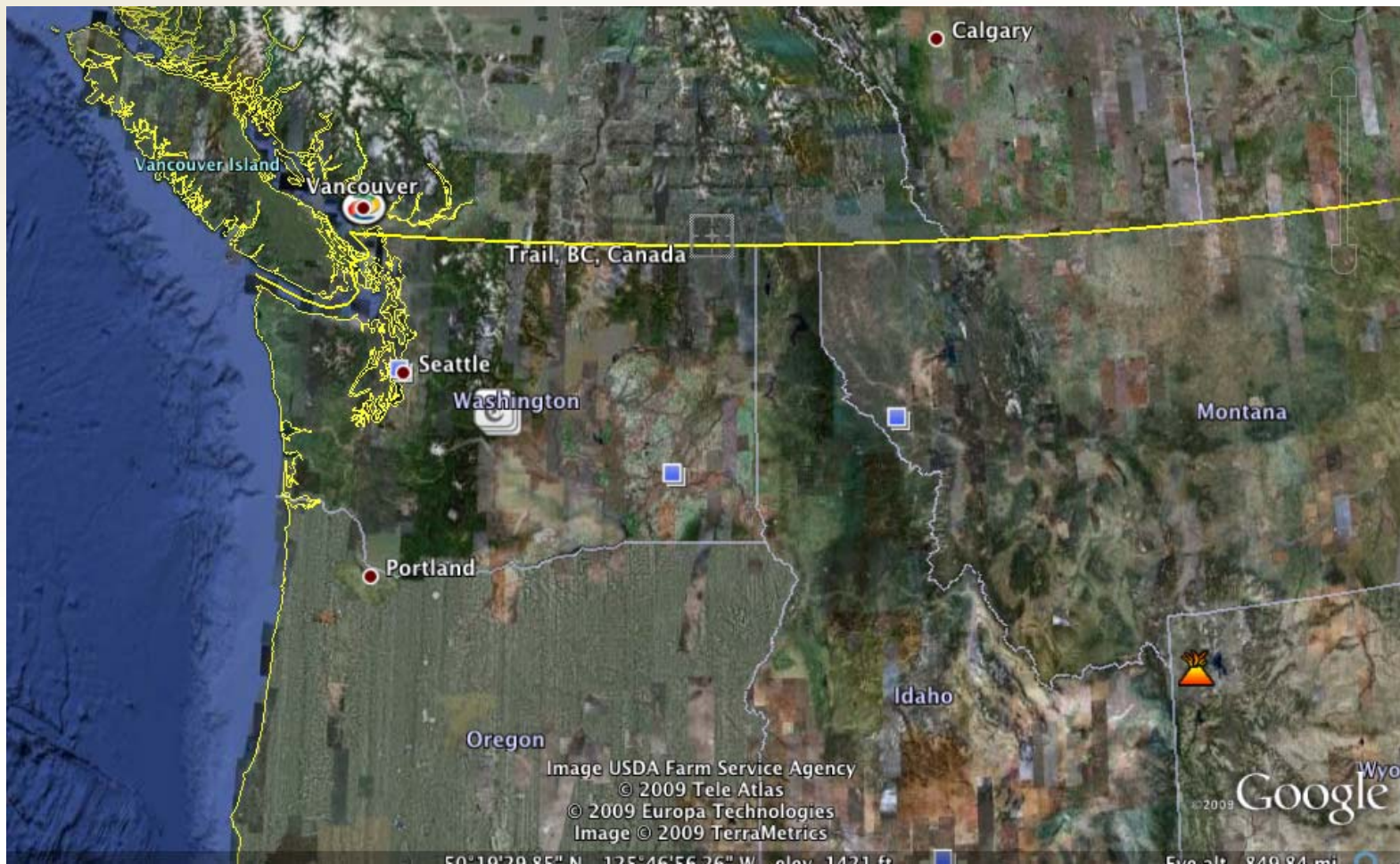


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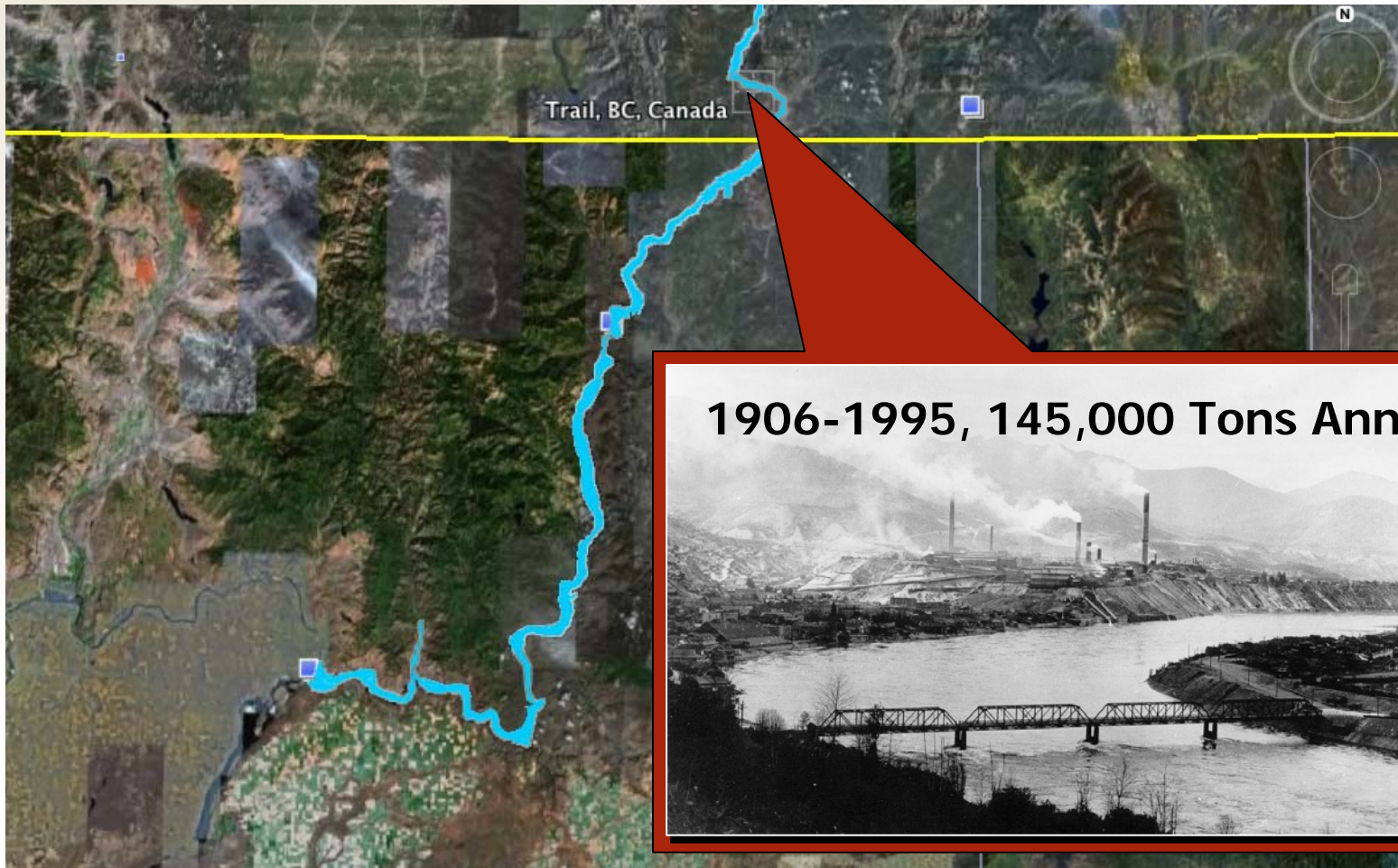


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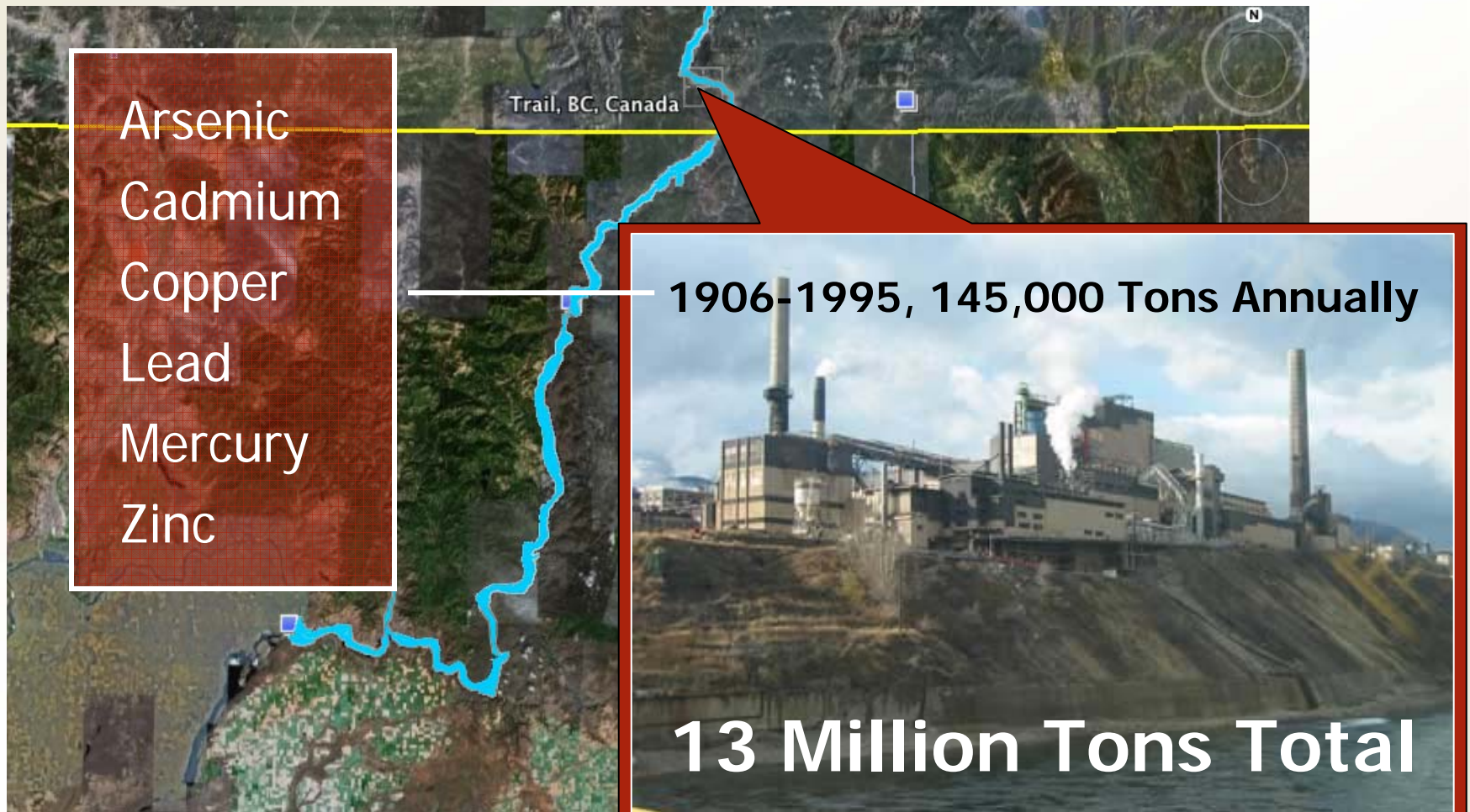
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Transporter liability if transporter “actively participated” in selection of site
- ***Pakootas v. Teck Cominco Metals, Ltd.***  
No extraterritorial application of CERCLA if effect in U.S.
- ***Raytheon Aircraft Co. v. United States***  
Historical use must be linked to site for liability
- ***United States v. Kramer***  
Dispute over allocation of liability is not a defense

# Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)



## Other Significant CERCLA Cases

- *John R. Sand & Gravel Co. v. United States*  
Courts will determine statute of limitations sua sponte
- *McDonald v. Sun Oil Co.*  
CERCLA preempts state statute of repose
- *Barnes ex rel. Estate of Barnes v. Kopper*  
Plaintiff must show link with CERCLA to invoke CERCLA
- *Kotrous v. Goss-Jewett Co. of N. Calif.*  
Proper pleading for a party not sued is cost recovery, not contribution
- *Georgia-Pacific Consumer Products v. International Paper*  
A contractual clause disclaiming future liability and predating CERCLA defeated CERCLA liability



## Significant RCRA Cases

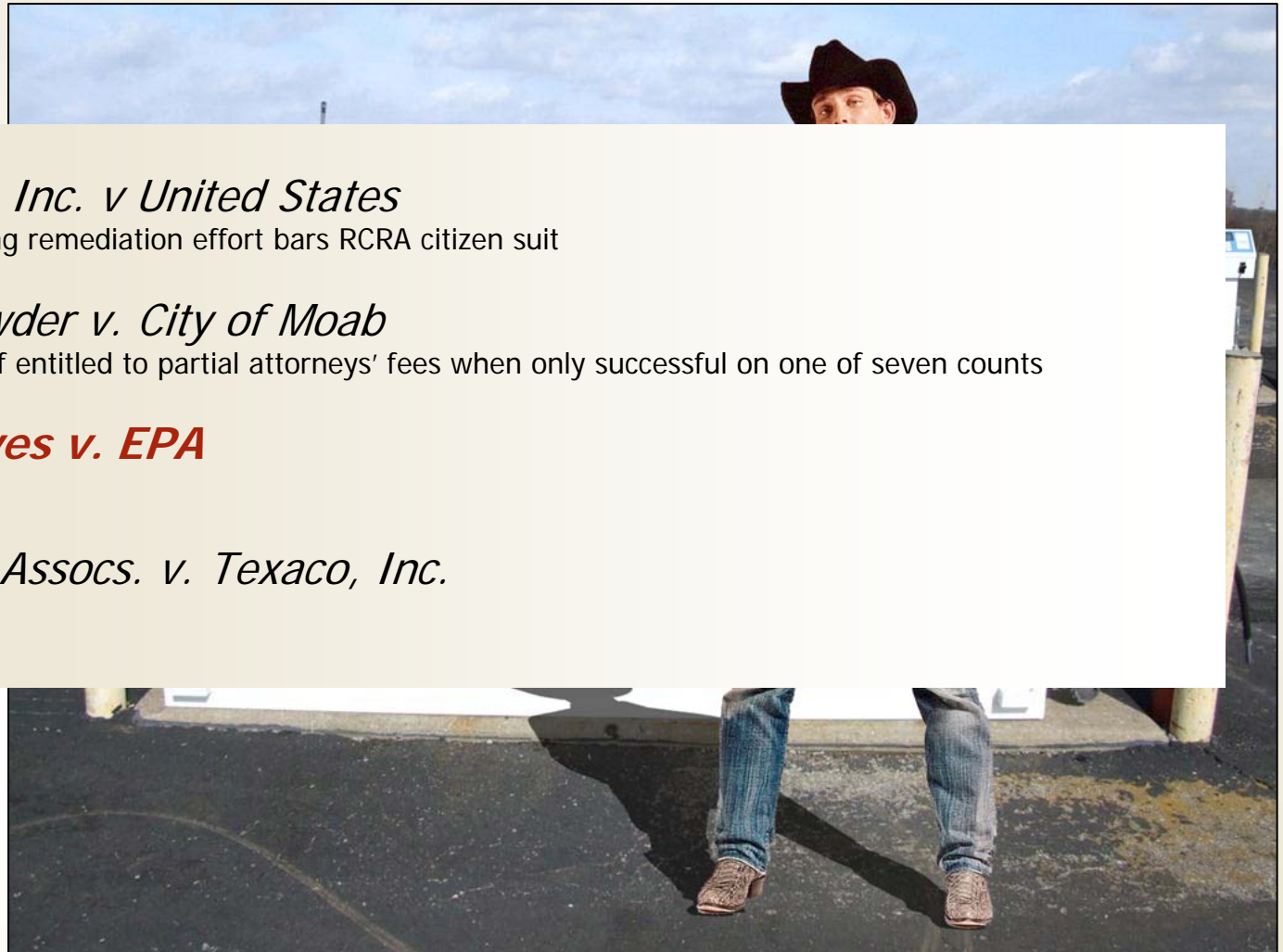
- *OSI, Inc. v United States*  
Ongoing remediation effort bars RCRA citizen suit
- *Browder v. City of Moab*  
Plaintiff entitled to partial attorneys' fees when only successful on one of seven counts
- ***Mayes v. EPA***
- *FCA Assocs. v. Texaco, Inc.*

# Resource Conservation and Recovery Act (RCRA)



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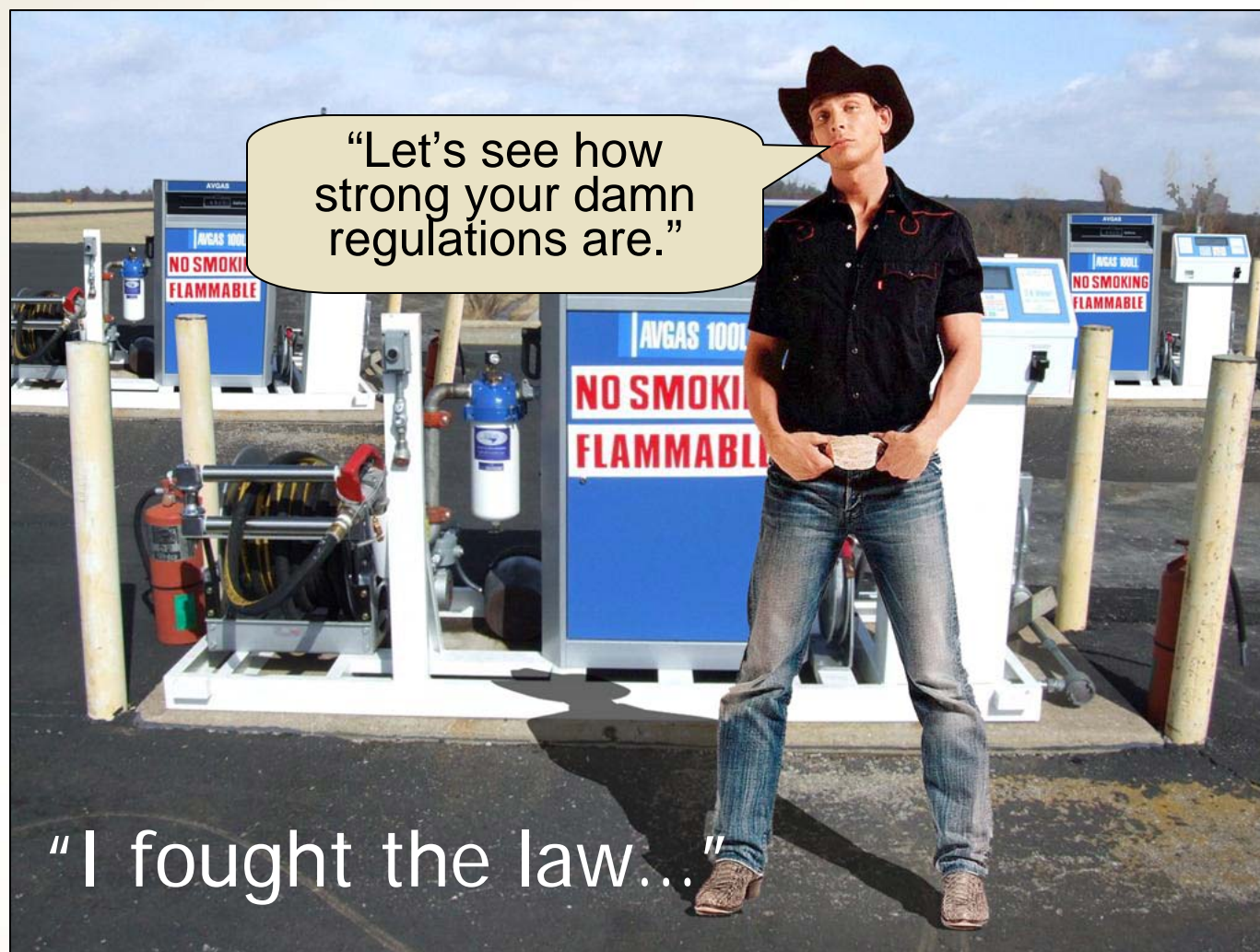


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Plaintiff entitled to partial attorneys' fees when only successful on one of seven counts
- ***Mayes v. EPA***  
Current owner of a property liable for underground storage tank registration and fees
- *FCA Assocs. v. Texaco, Inc.*  
RCRA attorneys' fees not available for recovery of past remediation

# Minnesota Environmental Response and Liability Act (MERLA)



## Significant MERLA Cases

- *Minnesota v. Evanston*



EPA

- *Brownfield Sites Database for Siting Renewable Energy Projects*
- *"Green Remediation" Primer*
- *Examples of "Green Remediation" Efforts*



MPCA

- *Petroleum Remediation*
- *Vapor Intrusion*



### Minnesota Uniform Environmental Covenants Act Enacted

*Laws designed to protect property after remediation and ensure that environmental covenants run with the land.*



# Questions?

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