SUPREME COURT OF THE UNITED STATES

No. 98–822

FRIENDS OF THE EARTH, INCORPORATED, ET AL., PETITIONERS *v.* LAIDLAW ENVIRONMENTAL SERVICES (TOC), INC.

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

[January 12, 2000]

JUSTICE STEVENS, concurring.

Although the Court has identified a sufficient reason for rejecting the Court of Appeals' mootness determination, it is important also to note that the case would not be moot even if it were absolutely clear that respondent had gone out of business and posed no threat of future permit violations. The District Court entered a valid judgment requiring respondent to pay a civil penalty of $405,800 to the United States. No post-judgment conduct of respondent could retroactively invalidate that judgment. A record of voluntary post-judgment compliance that would justify a decision that injunctive relief is unnecessary, or even a decision that any claim for injunctive relief is now moot, would not warrant vacation of the valid money judgment.

Furthermore, petitioners' claim for civil penalties would not be moot even if it were absolutely clear that respondent's violations could not reasonably be expected to recur because respondent achieved substantial compliance with its permit requirements after petitioners filed their complaint but before the District Court entered judgment. As the Courts of Appeals (other than the court below) have uniformly concluded, a polluter's voluntary post-complaint cessation of an alleged violation will not moot a citizen-

suit claim for civil penalties even if it is sufficient to moot a related claim for injunctive or declaratory relief.* This conclusion is consistent with the structure of the Clean Water Act, which attaches liability for civil penalties at the time a permit violation occurs. 33 U. S. C. § 1319(d) ("Any person who violates [certain provisions of the Act or certain permit conditions and limitations] shall be subject to a civil penalty . . ."). It is also consistent with the character of civil penalties, which, for purposes of mootness analysis, should be equated with punitive damages rather than with injunctive or declaratory relief. See *Tull* v. *United States*, 481 U. S. 412, 422–423 (1987). No one contends that a defendant's post-complaint conduct could moot a claim for punitive damages; civil penalties should be treated the same way.

The cases cited by the Court in its discussion of the mootness issue all involved requests for injunctive or declaratory relief. In only one, *Los Angeles* v. *Lyons*, 461 U. S. 95 (1983), did the plaintiff seek damages, and in that case the opinion makes it clear that the inability to obtain injunctive relief would have no impact on the damages claim. *Id.*, at 105, n. 6, 109. There is no precedent, either in our jurisprudence, or in any other of which I am aware,

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**Comfort Lake Assn.* v. *Dresel Contracting, Inc.*, 138 F. 3d 351, 356 (CA8 1998); *Atlantic States Legal Foundation, Inc.* v. *Stroh Die Casting Co.*, 116 F. 3d 814, 820 (CA7), cert. denied, 522 U. S. 981 (1997); *Natural Resources Defense Council* v. *Texaco Refining and Mktg., Inc.*, 2 F. 3d 493, 502–503 (CA3 1993); *Atlantic States Legal Foundation, Inc.* v. *Pan Am. Tanning Corp.*, 993 F. 2d 1017, 1020–1021 (CA2 1993); *Atlantic States Legal Foundation, Inc.* v. *Tyson Foods, Inc.*, 897 F. 2d 1128, 1134–1137 (CA11 1990); *Chesapeake Bay Foundation, Inc.* v. *Gwaltney of Smithfield, Ltd.*, 890 F. 2d 690, 696-97 (CA4 1989). Cf. *Powell* v. *McCormack*, 395 U. S. 486, 496, n. 8 (1969) ("Where several forms of relief are requested and one of these requests subsequently becomes moot, the Court has still considered the remaining requests").

that provides any support for the suggestion that post-complaint factual developments that might moot a claim for injunctive or declaratory relief could either moot a claim for monetary relief or retroactively invalidate a valid money judgment.