

TUESDAY, FEBRUARY 12, 2008  
9:00 A.M.

NO. 1

#24462

CLARK COUNTY, a political subdivision  
of the State of South Dakota,

and

STATE OF SOUTH DAKOTA PETROLEUM  
RELEASE COMPENSATION FUND,  
Plaintiffs and Appellants,  
vs.

SIOUX EQUIPMENT CORPORATION, a South  
Dakota corporation,  
Defendant and Third Party  
Plaintiff and Appellee,  
vs.

EATON CORPORATION and SNAP-TITE, INC.,  
Third Party Defendants  
and Appellee.

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(FOR APPELLEE  
SIOUX EQUIPMENT)

The Honorable Robert L. Timm  
Third Judicial Circuit  
Clark County

(CIV 06-10)

STATEMENT OF THE ISSUES

1. Whether the Circuit Court erred in finding that the statute of repose, SDCL §15-2A-3, bars Clark County's and PRCF's cause of action where a genuine issue of material fact remains as to whether Sioux Equipment's installation of above-ground fuel storage tanks and incidental piping at Clark County's Highway Department is an "improvement to real property" within the meaning of that statute.

Finding only that one of the five *Van Den Hul*<sup>1</sup> factors weighs in favor of a finding that Sioux Equipment's installation of new storage tanks and piping constituted an improvement to real property, the trial court held that SDCL 15-2A-3 precludes Plaintiffs' claims and granted Sioux Equipment's summary judgment motion. ..

Most relevant authority:

*Van Den Hul v. Baltic Farmers Elevator Co.*, 716 F.2d 504, 510-12 (8th Cir. 1983)  
*Biniek, v. Exxon Mobil Corp.*, 818 A.2d 330, 336 (NJ Super. 2002)  
 SDCL 15-2A-3

2. Whether, if SDCL 15-2A-3 is implicated, it is preempted by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), which creates a uniform federal discovery rule in cases brought under state law for property damage caused by a pollutant or contaminant released into the environment from a facility.

The trial court held that CERCLA preempts only statutes of limitations not statutes of repose.

Most relevant authority:

*Buggsi v. Chevron*, 857 F. Supp. 1427 (D. Or. 1994)  
*Burlington Northern v. Poole Chemical Co., Inc.*, 419 F.3d 355 (5<sup>th</sup> Cir. 2005)  
 42 U.S.C. § 9658(a)(1) & (b)(4)(A)