NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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UNITED STATES DEPARTMENT OF ENERGY *v.* OHIO ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 90–1341. Argued December 3, 1991—Decided April 21, 1992[1]

The Clean Water Act (CWA) and the Resource Conservation and Recovery Act of 1976 (RCRA) prohibit the discharge or disposal of pollutants without a permit, assign primary authority to issue permits to the Environmental Protection Agency (EPA), and allow EPA to authorize a State to supplant the federal permit program with one of its own under specified circumstances. Respondent State sued petitioner Department of Energy (DOE) over its operation of a uranium-processing plant in Ohio, seeking, among other relief, both state and federal civil penalties for past violations of the CWA and RCRA and of state laws enacted to supplant those federal statutes. Although conceding, *inter alia,* that both statutes render federal agencies liable for ``coercive'' fines imposed to induce compliance with injunctions or other judicial orders designed to modify behavior prospectively, DOE asserted sovereign immunity from liability for ``punitive'' fines imposed to punish past violations. The District Court held that both statutes waived federal sovereign immunity from punitive fines, by both their federal-facilities and citizen-suit sections. The Court of Appeals affirmed in part, holding that Congress had waived immunity as to punitive fines in the CWA's federal-facilities section and RCRA's citizen-suit section, but not in RCRA's federal-facilities section.

*Held:*Congress has not waived the National Government's sovereign immunity from liability for civil fines imposed by a

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[1]Together with No. 90–1517, *Ohio et al.* v. *United States Department of Energy,* also on certiorari to the same court.

State for past violations of the CWA or RCRA. Pp.5–20.

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(a)This Court presumes congressional familiarity with the common rule that any waiver of the Government's sovereign immunity must be unequivocal. See *United States* v. *Mitchell,* 445 U.S. 535, 538–539. Such waivers must be construed strictly in favor of the sovereign and not enlarged beyond what the language requires. See, *e. g., Ruckelshaus* v. *Sierra Club,* 463 U.S. 680, 685–686. P.5.

(b)Although both the CWA and RCRA citizen-suit sections authorize a State to commence a civil action ``against any person (including . . . the United States . . .),'' and authorize the district courts to impose punitive fines under the Acts' civil-penalties sections, the incorporation of the latter sections must be read to encompass their exclusion of the United States from among the ``person[s]'' who may be fined, see, *e. g., Engel* v. *Davenport,* 271 U.S. 33, 38. The citizen-suit sections' initial inclusion of the United States as a ``person'' goes only to the clauses subjecting the Government to suit, and a broader waiver may not be inferred. Both the CWA and RCRA contain various provisions expressly defining ``person'' for purposes of the entire section in which the term occurs, thereby raising the inference that a special definition not described as being for purposes of its ``section'' or ``subchapter'' was intended to have the more limited application to its own clause or sentence. This textual analysis gives effect to all the language of the citizen-suit sections, since their incorporations of their statutes' civil-penalties sections will effectively authorize punitive fines where a polluter other than the United States is brought to court, while their explicit authorizations for suits against the United States concededly authorize coercive sanctions. Pp.5–10.

(c)The relevant portion of the CWA's federal-facilities section, 33 U.S.C. §1323(a)—which, *inter alia,* subjects the Government to ``all . . . State . . . requirements . . . and process and sanctions''; explains that the Government's corresponding liability extends to ``any requirement, whether substantive or procedural . . ., and . . . to any process and sanction . . . enforced in . . . cour[t]''; and provides that the Government ``shall be liable only for those civil penalties arising under Federal law or imposed by a State . . . court . . . to enforce [its] order or . . . process''—does not waive the Government's immunity as to punitive fines. Ohio's first argument, that §1323(a)'s use of the word ``sanction'' must be understood to encompass punitive fines, is mistaken, as the term's meaning is spacious enough to cover coercive as well as punitive fines. Moreover, good reason to infer that Congress was using ``sanction'' in its coercive sense, to the exclusion of punitive

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fines, lies in the fact that §1323(a) twice speaks of ``sanctions'' in conjunction with judicial ``process,'' which is characteristically ``enforced'' through forward-looking coercive measures, and distinguishes ``process and sanctions'' from substantive ``requirements,'' which may be enforced either by coercive or punitive means. Pp.11–14.

(d)Ohio's second §1323(a) argument, that fines authorized under an EPA-approved state permit program are within the scope of the ``civil penalties'' covered by the section's final waiver proviso, also fails. The proviso's second modifier makes it plain that ``civil penalties'' must at least include a coercive penalty since they are exemplified by penalties ``imposed by a state . . . court to enforce [its] order.'' Moreover, the contention that the proviso's ``arising under federal law'' modifier is broad enough to include penalties prescribed by EPA-approved state statutes supplanting the CWA is answered by this Court's interpretation of the phrase ``arising under'' federal law in 28 U.S.C. §1331 to exclude cases in which the plaintiff relies on state law, even when the State's exercise of power in the particular circumstances is expressly permitted by federal law, see, *e. g., Gully* v. *First National Bank in Meridian,* 299 U.S. 109, 116, and by the probability that Congress adopted the same interpretation of ``arising under federal law'' here, see, *e. g., ICC* v. *Locomotive Engineers,* 482 U.S. 270, 284–285. The plain language of the ``civil penalties arising under federal law'' phrase suggests an apparently expansive but uncertain waiver that is in tension with the clear waiver for coercive fines evinced in §1323(a)'s antecedent text; that tension is resolved by the requirement that any statement of waiver be unequivocal and the rule that waivers be narrowly construed. Pp.14–17.

(e)RCRA's federal-facilities section—which, in relevant part, subjects the Government to ``all . . . State . . . requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief),'' and provides that the United States ``shall [not] be immune . . . from any process or sanction of any . . . Court with respect to the enforcement of any such injunctive relief''—is most reasonably interpreted as including substantive standards and the coercive means for implementing those standards, but excluding punitive measures. All of the textual indications of the kinds of requirements meant to bind the Government refer either to mechanisms requiring review for substantive compliance (permit and reporting requirements) or to mechanisms for enforcing substantive compliance in the future

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(injunctive relief and sanctions to enforce it), in stark contrast to the statute's failure to mention any mechanism for penalizing past violations. Moreover, the fact that the only specific reference to an enforcement mechanism in the provision's final sentence describes ``sanction'' as a coercive means of injunctive enforcement bars any inference that a waiver of immunity from ``requirements'' somehow extends to punitive fines that are never so much as mentioned. Pp.17–19.

904 F.2d 1058, reversed and remanded.

SOUTER, J., delivered the opinion for a unanimous Court with respect to Part II–C, and the opinion of the Court with respect to Parts I, II–A, II–B, and III, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. WHITE, J., filed an opinion concurring in part and dissenting in part, in which BLACKMUN and STEVENS, JJ., joined.