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SCOTUS Decision Clarifies Property Owners' Restoration Claims at Superfund Sites

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This week the Supreme Court issued its long-anticipated [decision](#) in *Atlantic Richfield Co. v. Christian* ("Atlantic Richfield"), providing further interpretation of disputed provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). The decision in *Atlantic Richfield* provides additional clarity on the issue of whether and when property owners at a CERCLA remediation site may pursue additional relief using state law claims where the cleanup is being performed according to a remedy approved by the U.S. Environmental Protection Agency ("EPA").

Background

The *Atlantic Richfield* case arose out of environmental contamination at the Anaconda Co. Smelter Site in Anaconda, Montana (the "Site"), where nearly 100 years of copper and ore processing and smelting operations led to its designation as a Superfund site by EPA and placement on the Superfund program's National Priorities List ("NPL"). The surrounding residential areas were also contaminated, and were included in the Site as defined by EPA. In the 35 years since the Site was listed on the NPL, EPA has overseen an extensive cleanup by Atlantic Richfield Company ("Atlantic Richfield"), including remediation of more than 800 residential and commercial properties, removal of millions of cubic yards of tailings, mine waste, and contaminated soil, and capping of waste. Atlantic Richfield estimates that it has spent more than \$450 million implementing EPA's orders and the EPA-approved remedy at the Site.

In 2008, a group of 98 residential property owners whose property had been contaminated by the smelter (the "Landowners") sued Atlantic Richfield in Montana state court, asserting state law claims for trespass, nuisance and strict liability, and seeking restoration damages and other forms of relief. The Landowners proposed a restoration plan that went beyond the EPA-approved cleanup plan. The Landowners estimated that their proposed restoration plan would cost an additional \$50 to \$58 million.

After the Montana Supreme Court held that the state courts had jurisdiction to hear the Landowners' claims, Atlantic Richfield appealed to the U.S. Supreme Court, arguing that CERCLA preempted the Landowners' claims.

First, Atlantic Richfield argued that CERCLA provides jurisdiction for actions arising under CERCLA only in federal court, divesting the state court of any jurisdiction to hear the Landowners' claims, based on section 113(b), which provides that "the United States district courts shall have exclusive original jurisdiction over all controversies arising under" CERCLA. Atlantic Richfield also argued that section 113(h) broadened the state preemption provisions in section 113(b) by stripping jurisdiction from federal courts for actions "to review any challenges to removal or remedial action" selected by EPA. According to Atlantic Richfield, a state court thus would have no jurisdiction to hear any claim that challenges a cleanup action.

Second, Atlantic Richfield argued because the Landowners themselves were current owners of property within the Site—and thus potentially responsible parties ("PRPs") as defined by the statute—they could not undertake any remedial action, including their proposed restoration plan, without EPA approval. In its briefs and at oral argument, Atlantic Richfield emphasized that the state courts should not hear claims like those raised by the Landowners because it would allow third parties to interfere with EPA-selected remedies and would undermine CERCLA's goal of encouraging cleanups and settlement agreements.

Supreme Court Decision & Implications

On April 20, 2020, the Supreme Court of the United States ruled largely in favor of the Landowners' efforts to pursue the state-law claims and their desired restoration plan, but clarified that the Landowners' status as PRPs at the Site meant their restoration claims were subject to provisions of CERCLA applicable to "remedial action".

On the jurisdictional issue, the Court determined that state courts retain jurisdiction to hear state law based claims. Although CERCLA section 113(b) deprives state courts of jurisdiction for claims "arising under" CERCLA, it does not displace state court jurisdiction over actions brought under other sources of law including state law. These are not claims "arising under" CERCLA, and so they are not barred by section 113(b). The Court further held that the bar in section 113(h), which prohibits federal courts from hearing certain remedy challenges, simply does not apply to state courts hearing their own state law claims.

As to the Landowners' status as PRPs covered by the prohibition in CERCLA section 122(e)(6) for any actions that are inconsistent with a CERCLA remedial investigation or response action, the Court agreed with *Atlantic Richfield*. The Court concluded that the Landowners are PRPs under the plain language of the statute in section 107(a), which defines PRPs to include current owners of any location where hazardous waste has come to be located. The Court then concluded that because the Landowners are PRPs, section 122(e)(6) requires them to seek EPA approval for any remedial action, including their restoration claims. The Court assuaged the Landowners' fear that they would need EPA approval any time they dug a sandbox or planted a garden, noting that EPA approval is required only for "remedial action," which covers certain technical activities identified in CERCLA, and for only so long as the Site remains on the Superfund list.

The Court rejected the Landowners' and Government's arguments that because the statute of limitations had run on claims against the Landowners, they could not be considered PRPs. The Court also dismissed the Landowners' argument that they are not PRPs because they did not receive the notice of settlement negotiations required by section 122(e)(1) which was to be provided to all PRPs. The Court quickly disposed of both of these arguments, recognizing that the applicability of the statute of limitations and EPA's enforcement discretion to neither pursue residential landowners for response actions nor provide them notice of such settlements could not alter the Landowners' status as PRPs.

The Court recognized that its interpretation of section 107(a) to include the Landowners as PRPs honors CERCLA's objective of a comprehensive approach to addressing hazardous waste pollution and finding the Landowners' restoration claims subject to the requirements of section 122(e)(6) further ensures the careful development of a single EPA-led cleanup effort.

The Court remanded the case to the Montana Supreme Court for further proceedings in accordance with its decision.

The Supreme Court's decision in *Atlantic Richfield* raises implications for property owners at and near sites undergoing cleanups overseen by EPA, including claims that may be brought by and against them concerning hazardous waste and cleanups. Many questions will need to be addressed in the future at Superfund sites where EPA is overseeing remediation.

FOR MORE INFORMATION

For questions regarding how the *Atlantic Richfield* decision may impact your property ownership interests, please contact [Michael Goodstein](#) (202-298-1923) or [Anne Lynch](#) (202-298-1926) in our Washington, D.C. office, and [Brian Zagon](#) (925-282-8015) or [Allison McAdam](#) (925-282-8011) in our California Bay Area office.

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