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U.S. Supreme Court Allows Landowners' State-Law Challenge to Ongoing CERCLA Remediation

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On April 20, the United States Supreme Court decided in *Atlantic Richfield Co. v. Christian et al.*[1] that landowners can sue under state common law for restoration of their properties located within the boundaries of a Superfund site subject to a USEPA-approved remedy. The Court also held, however, that because the landowners are, themselves, PRPs under CERCLA, USEPA must approve any remedial action that goes beyond the USEPA-approved remedy.

Case Background

The nearly 100 plaintiffs own property located within the boundaries of the Anaconda Copper Smelter Superfund Site (the Site) in Montana. The Site, which covers over 300 square miles, was contaminated with heavy metals from nearly a century of copper-smelting operations. Atlantic Richfield Co. (Arco) purchased the Site in the 1970s. In 1983, the U.S. Environmental Protection Agency (USEPA) designated the Site as one of the inaugural "Superfund sites" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* Arco has since spent nearly a half-billion dollars over the past 35 years cleaning up the Site under a settlement agreement with USEPA.

In 2008, plaintiffs sued Arco in Montana state court for restoration damages under state common-law theories of nuisance, trespass, and strict liability. Montana law requires restoration damages to be spent on property rehabilitation. The landowners' proposed property rehabilitation plan exceeded the requirements of USEPA's cleanup plan. The trial court ruled that CERCLA did not preclude the landowners' restoration-damages claim.

The Montana Supreme Court affirmed the trial court's decision, holding that (1) CERCLA did not strip Montana courts of jurisdiction over the landowners' claim and (2) the landowners' remedy could exceed USEPA's existing remedy, because the landowners were not potentially responsible parties (PRPs) under CERCLA. The U.S. Supreme Court affirmed the jurisdictional holding but reversed the holding regarding the landowners' PRP status.

Analysis

The Supreme Court held that CERCLA does not bar the landowners from bringing an action in state court under state law that effectively challenges a USEPA-selected cleanup plan. The Court reasoned that Section 113 of CERCLA—the provision insulating USEPA-selected cleanup plans from legal challenge—"does not displace state court jurisdiction over claims brought under *other sources of law*."[2] Section 113(b) grants federal district courts exclusive, original jurisdiction over "all controversies arising under" CERCLA, and Section 113(h) strips those courts of jurisdiction "to review any challenges to removal or remedial action" except in five limited circumstances. The Court noted that neither subsection mentions state courts or their ability to hear *non*-CERCLA cases—the situation presented here. This language of Section 113, in the Court's view, is not explicit enough to block a state court from hearing its own state claims.[3]

While the Court recognized Montana state courts' jurisdiction to hear the landowners' claims, the Court also held that the landowners are PRPs under CERCLA and, as such, cannot undertake any remedial action without USEPA's approval. Section 122(e)(6) of CERCLA provides that when USEPA and/or a PRP has begun a remedial investigation

[1] No. 17–1498, slip op., 590 U.S. ___ (2020).
[2] *Id.* at 9 (emphasis added).
[3] *Id.* at 11–12.

and feasibility study for a Superfund site, "no *potentially responsible party* may undertake any remedial action at the facility" unless USEPA agrees.[4] Thus, whether the landowners could pursue a different cleanup plan turned on whether they qualified as PRPs under CERCLA. The Court found in the affirmative. It reasoned that the landowners meet the first of four types of PRPs defined under Section 107(a)—any "owner" of a "facility."[5] This is because their property is an area where "a hazardous substance has . . . come to be located."[6]

The Court rejected the landowners' argument that they are no longer PRPs, if they ever were, because CERCLA's six-year limitations period for cost-recovery actions under Section 113(g) has run. The Court has held previously that a landowner can be *potentially* responsible even if ultimately shielded from liability under CERCLA—such as by a statutory defense or, as here, the expiration of a limitations period. Otherwise, property owners "would be free to dig up arsenic-infected soil and build trenches to redirect lead-contaminated groundwater without even notifying [USEPA], so long as they have not been sued within six years of commencement of the cleanup."[7]

The majority assured that its holding does not require the landowners to approach USEPA when "planting a garden, installing a lawn sprinkler, or digging a sandbox."[8] But the landowners do need USEPA permission before pursuing a cleanup that goes beyond what USEPA agreed to with Arco. If USEPA agrees to the additional cleanup, Arco can be liable for remedial costs even beyond those required under CERCLA.

As the Court only addressed *common-law* claims, the question remains whether this decision also allows *statutory* challenges (brought under state environmental laws, for instance) to ongoing USEPA-approved remediations. Such claims often raise a potential conflict between CERCLA and its state counterparts, invoking the "pre-emption" doctrine under the Supremacy Clause of the U.S. Constitution. The Court did not focus on this doctrine in its analysis.

If you have any questions about CERCLA's interaction with state claims or any other CERCLA issues, please contact any of the authors of this client alert.

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[4] 42 U.S.C. § 9622(e)(6) (emphasis added).
[5] 42 U.S.C. § 9607(a)(1).
[6] 42 U.S.C. § 9601(9)(B).
[7] Slip op. at 15.
[8] *Id.* at 17.

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