



Legal Articles

With EPA Approval, Landowners May Bring State Law Claims for Remedial Action in Addition to Ongoing Superfund Cleanup

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Last month, the U.S. Supreme Court determined that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) does not preclude Montana residents from bringing state common law claims to recover the cost of cleanup of their properties beyond the U.S. Environmental Protection Agency's (EPA) approved cleanup plan. But the Court also ruled that only the EPA has the authority to approve any changes to its cleanup plans. The Court's findings in *Atlantic Richfield Co. v. Christian* are applicable nationwide, impacting past and future cleanup sites. The decision means that a landowner whose property is inside a CERCLA Superfund site may use state common law claims to recover the cost of restoring property above and beyond what the EPA recommends, but only if the EPA approves such enhanced restoration measures.

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The case was brought by landowners in Anaconda, Montana, which was home to one of the world's largest copper smelters from 1884 to 1980. Anaconda and a 300 square mile radius around the smelter is now an EPA ordered Superfund site requiring cleanup under CERCLA. Atlantic Richfield has worked with the EPA for 35 years, at a cost of \$470 million, to remediate the Superfund site. However, local landowners have fought the company and the EPA on the cleanup standard, ultimately bringing common law claims seeking restoration damages in Montana state district court for further restoration of their properties.

The critical questions before the Court were whether CERCLA strips Montana courts of jurisdiction over the landowners' claims for restoration damages that are in addition to or different from what the EPA has ordered and, if not, whether the landowners must seek EPA approval for their restoration plan.

CERCLA Does Not Preclude State Law Claims for Remedial Action at Superfund Sites

The Court determined that CERCLA does not strip Montana state courts of jurisdiction over claims that are brought under state law, even when the claims are related to contamination at Superfund sites. The Court confirmed that Section 113(b) of CERCLA provides the United States federal district courts with exclusive original jurisdiction over all controversies arising under CERCLA. However, the Court found that state court claims do not arise under CERCLA, but rather arise under state law and therefore are not subject to exclusive federal court jurisdiction.

Atlantic Richfield also attempted to argue that Section 113(h) of CERCLA, which prevents any court other than the federal courts from reviewing challenges to removal or remedial actions selected under CERCLA, precludes state court jurisdiction. The Court was unpersuaded and reiterated that the landowners' claims did not arise under CERCLA; therefore, Section 113(h) also did not preclude state court jurisdiction over their claims.

Accordingly, the Court affirmed the Montana Supreme Court's determination that the restoration sought by the landowners was not a challenge arising under CERCLA. The Court held that CERCLA does not preclude challenges in state court for state law claims that relate to remediation of a Superfund site.

Landowners Are Potentially Responsible Parties that Must Obtain EPA Approval of Remedial Work

The Court held that, as owners of land where hazardous substances were located, the Anaconda Superfund site landowners are potentially responsible parties (PRP) under Section 107(a) of CERCLA. The Court noted that while the landowners are potentially liable for removal or remedial action costs, they could likely shield themselves from liability under CERCLA's "innocent landowner" or "third party defense."

A critical aspect of the Court's ruling is the acknowledgement that Section 122(e)(6) of CERCLA requires the landowners to obtain EPA approval for any remedial action associated with contaminated materials. The Court's analysis emphasized the comprehensive objective of CERCLA—that there is careful development of a single EPA-led cleanup effort rather than competing efforts. The Court confirmed that Atlantic Richfield could be liable under state law nuisance and trespass claims, with the landowners seeking restoration damages, which would be in addition to what is required of Atlantic Richfield under

CERCLA. However, the Court found the EPA must first approve any remedial work the landowners seek to carry out, thus ensuring a comprehensive approach.

The Court's opinion has the potential to encourage more owners of property involved in Superfund sites to use state law claims to pay for a better cleanup than what the EPA has approved. Atlantic Richfield also warned the Court that parties may have less incentive to settle with the United States to fix the party's cleanup obligations if they are subject to potentially conflicting or additional cleanup obligations. Ultimately, the breadth of impact of this decision will vary based on state law and the circumstances of the individual Superfund site, but it certainly has the potential to complicate and slow already bureaucratic Superfund decision-making, approval, and remediation.