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Supreme Court Holds That Superfund Site Landowners Need EPA Approval To Obtain State-Law Cleanup Remedies

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***Atlantic Richfield Co. v. Christian, et al.* No. 17-1498**

Today, the Supreme Court held 7-2 that landowners at Superfund toxic waste sites must obtain EPA approval before seeking damages under state law for cleanup beyond what EPA has ordered.

Background:
In the 1970s, Atlantic Richfield purchased a now-defunct copper-smelting operation in Montana and has since spent more than $450 million cleaning up the site under a cleanup plan created by the Environmental Protection Agency ("EPA") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

In 2008, nearby private landowners filed state-law claims against Atlantic Richfield in Montana state court, seeking around $50 million in "restoration damages" to pay for cleanup above and beyond what EPA had ordered. Atlantic Richfield argued that CERCLA bars the restoration-damages claims for three reasons: (1) the landowners' claims are, in effect, a challenge to EPA's plan and CERCLA Section 113 strips state courts of jurisdiction over such claims; (2) the landowners are "potentially responsible parties" under CERCLA § 122 who must get EPA approval for any remedial action; and (3) CERCLA preempts such state-law claims. The Montana Supreme Court rejected each of Atlantic Richfield's arguments.

Issues:
(1) Is a state-law claim for restoration damages in state court—seeking cleanup remedies that conflict with EPA-ordered remedies—a "challenge" to EPA's cleanup plan that is jurisdictionally barred by CERCLA Section 113? (2) Is a landowner at a Superfund site a "potentially responsible party" that must seek EPA's approval under CERCLA Section 122 before engaging in remedial action??

Court's Holding:
(1) No. CERCLA Section 113 strips state courts of jurisdiction only over claims brought under CERCLA, not those brought under state law.

(2) Yes. The landowners are potentially responsible parties because hazardous substances have "come to be located" on their properties. Thus, under CERCLA Section 122, the landowners cannot take "remedial action" on their lands without EPA approval.

"Interpreting 'potentially responsible parties' to include owners of polluted property . . . ensure[s] the careful development of a single EPA-led cleanup effort rather than tens of thousands of competing individual ones."

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Lucas C. Townsend

Bradley J. Hamburger

Brad G. Hubbard

Nick Harper

Chief Justice Roberts, writing for the Court

What It Means:

- The Court's decision provides certainty to companies with potential Superfund-cleanup exposure by making clear that EPA has exclusive authority to control both the cleanup efforts and the scope of responsible parties' potential Superfund liability. The decision prevents landowners from imposing additional cleanup obligations or liabilities absent explicit EPA approval.
- The Court's interpretation of "potentially responsible party" means that Superfund-site landowners will need to obtain EPA authorization before significantly altering their land. But they need not obtain EPA approval to undertake minor modifications, such as "planting a garden, installing a lawn sprinkler, or digging a sandbox."
- The Court's decision does not block landowners from bringing state-law claims seeking money damages for contamination on their land, so long as those damages are not earmarked for cleanup efforts at a Superfund site.
- The Court declined to address whether CERCLA preempts state-law cleanup remedies that go above and beyond EPA's cleanup plan.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Allyson N. Ho
+1 214.698.3233
aho@gibsondunn.com

Mark A. Perry
+1 202.887.3667
mperry@gibsondunn.com

Related Practice: Environmental Litigation and Mass Tort

Daniel W. Nelson
+1 202.887.3687
dnelson@gibsondunn.com

Stacie B. Fletcher
+1 202.887.3627
sfletcher@gibsondunn.com

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