

SCOTUS Clarifies Uncertainty Surrounding Restoration Damages Under Superfund Program

April 20, 2020

On Monday, April 20, the Supreme Court of the United States released the [much-anticipated opinion](#) that had the potential to turn the entire Superfund Program on its head. The Court resolved the lingering question regarding whether parties with a cleanup plan approved by the U.S. EPA could be held liable to private parties for remedies beyond what the Federal Government requires.

In the case of *Atlantic Richfield Company v. Christian* (ARCO), state law claims were pitted directly against federal law claims, which were largely decided on a textual basis in a 7 to 2 ruling by Chief Justice John Roberts. Potentially Responsible Parties (PRPs) currently negotiating with U.S. EPA should review the SCOTUS opinion, as it outlines a roadmap for PRPs to use in protecting themselves against third-party damages for restoring the property under federal law, but preserves third-party claims for state law property damages.

The opinion preserves the sanctity and integrity of the Superfund process by holding that the group of landowners living within a Superfund site must seek EPA approval before pursuing restoration damages exceeding the government's cleanup plan under CERCLA. This ensures "careful development of a single EPA-led cleanup effort rather than tens of thousands of competing individual ones," Roberts wrote. The Court relied upon Section 113 of CERCLA in determining the Federal Court has "exclusive original jurisdiction for all controversies arising under this Chapter."

The Court further concluded that the landowners were also PRPs as they were owners of the property within the Superfund site, recognizing that they may have at their disposal defenses such as the Innocent Landowner Defense. This decision will help give PRPs certainty that once a cleanup plan is approved by the federal government, they are insulated from collateral attacks from adjoining landowners or owners within the Superfund Site for restoration damages that exceed a cleanup plan that addresses the federal government's requirements.

Equally important is the fact that the Court recognized the landowner's right to pursue state law claims in state court for trespass, nuisance, and strict liability. The Court held that Superfund does not displace the landowner's state law claims. This part of the opinion should give PRPs pause for concern before agreeing to a cleanup plan with the federal government. There is the very likely prospect that after PRPs go through the Superfund process and obtain an approved cleanup plan from the federal government, they may be attacked collaterally for common law state law claims from adjoining landowners or owners within the superfund site. Alive and well are state law claims premised on diminution in fair market values. PRPs must carefully evaluate CERCLA cleanup

plans and the potential for state law claims before entering into an agreement with the federal government. Based on this development, we can expect to see an increase in property claims for diminution of fair market value at the state level.

The ARCO decision also leaves open the possibility of states to pursue cleanup remedies beyond what the federal government is requiring at a Superfund site based upon their own state CERCLA Program; for example, New Jersey under the Spill Act. New Jersey is one of many states that have their own CERCLA Programs. This sets the stage for a showdown between the federal CERCLA Program and state CERCLA Programs.

Please reach out to the author of this alert or any member of McGlinchey's Environmental team with any questions you may have regarding the CERCLA case or any other environmental issue.

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