Environmental Alert: Supreme Court Issues Important Superfund Ruling

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On April 20, 2020 the United States Supreme Court handed down an important decision on the reaches of settlements involving the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or "Superfund"). In *Atlantic Richfield Co. v. Christian, et al.*, No. 17-1498, the Court allowed 98 southwest Montana residents to sue under state law for money damages to clean up their properties, even though the properties were already subject to specific remedial activities under a settlement agreement with the EPA. However, the Court said any additional remedies beyond money damages must be approved by the EPA.

Another CERCLA "Challenge" Case

CERCLA confers exclusive jurisdiction to the federal courts not only over claims expressly raised under the law, but also over any claims deemed to be a "challenge" to CERCLA. A "challenge" is subject to exclusive federal jurisdiction. What constitutes an impermissible "challenge" has spurred myriad cases.

In 1983, Atlantic Richfield Company (ARCO) reached a settlement with the EPA for over $450 million to remedy the Anaconda Company Superfund Site in Montana. Decades later, private landowners on the Superfund Site sued, arguing that the settlement was insufficient and requesting monetary damages of up to $58 million be placed in a trust fund for additional restoration of the plaintiffs' properties. The Montana courts granted partial summary judgment for the landowners holding that CERCLA did not preclude their state law claims. Essentially, the Montana court defined "challenge" narrowly and held that the proposed relief must actively interfere with EPA's work implementing the agreed CERCLA remedy if it is to be exclusively heard in the federal court. ARCO appealed to the Supreme Court, arguing the requested damages contradicted EPA's remedy, thus constituting a CERCLA challenge.

State Law Claims Can Proceed

The Supreme Court held CERCLA neither precludes state common law suits nor strips state courts of the ability to hear common law suits arising from CERCLA sites. The decision reopens argument over what makes a CERCLA case and if a plaintiff needs to explicitly name the law for the case to "arise under" CERCLA. The Court specified that CERCLA prohibits challenges to a CERCLA remedy, or pursuit of a

different, non-EPA approved remedy.

In some ways, the decision is consistent with prior law. CERCLA has never precluded state common law suits, only limiting suits that are CERCLA "challenges." The Court's decision underscores that state common law suits remain viable even if they involve CERCLA sites. The rub continues to lie in the interpretation of "challenge."

Monetary Payment Might Not a "Challenge" Make…

In other ways, CERCLA precedent was created. The Court found additional monetary payment was not a "challenge" and therefore was not precluded by CERCLA. Notably, Montana law is different than most states in that Montana allows a plaintiff to recover restoration damages for private property even if restoration damages exceed the property's fair market value. Montana law also requires the restoration damages are actually used to rehabilitate the property. If the applicable law does not require actual restoration to occur, like under Montana law, parties may be able to distinguish *Atlantic Richfield*. Nonetheless, even in states that cap restoration damages at full fair market value of the property, this decision may open the door to landowners inflating property value diminution and seeking compensation disproportionate to the appropriate remediation requirements.

PRPs should keep this in mind when negotiating future settlements with EPA; in any situation comparable to *Atlantic Richfield*, settlement agreements may not provide the final resolution one might hope for. EPA's interpretation and implementation of this decision will affect its negotiation tactics with PRPs for settlements under CERCLA. For instance, EPA might provide some assurances it will not later approve more stringent cleanup remedies or agree in advance not to approve additional remedial work. Barring such measures by EPA, this decision effectively means a settlement with EPA might later be supplemented if private parties determine there was insufficient investment in the site. Or less broad third-party claims reopeners might be proposed by PRPs. Otherwise, this decision has the potential to lead to more, and potentially more complicated, litigation over Superfund sites even after parties have reached settlements with the EPA and undergone extensive remediation efforts.

But Plaintiffs Can't Go It Alone On New Remedial Action

The Supreme Court did leave some protection for PRPs by ruling any new remedial action would need to be approved by EPA. This will help to prevent contradictory cleanup schemes. It may also encourage private parties to engage with EPA in the Superfund remediation process as they will not be able to unilaterally compel additional cleanup activity through court action.

Today's Neighbors, Tomorrow's PRPs?

The decision also potentially expanded the view of who is a PRP. The Court noted CERCLA includes as a PRP anyone owning property where hazardous substance has "come to be located" and any unique enforcement approach by EPA does not change the law's clear definition. This may be a helpful argument in cases where property owners allege their land is contaminated but where they are not yet part of the defined Superfund Site. Further, the Court's interpretation of the plain language of the Act may result in plaintiffs becoming PRPs. In *Atlantic Richfield*, the statute of limitations to involve the landowners had passed, but under different facts or circumstances a defendant may be able to cause an opposing party to be named as a PRP who has yet avoided EPA's purview. Any landowners who become named as PRPs would then need EPA authorization before significantly altering their land.

In the end, the case was remanded to Montana state court and the dispute will continue. But what has been decided will certainly be cited in any CERCLA challenge case for years to come.

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