

Atlantic Richfield Co. v. Christian: Supreme Court Rules that State Law Remedies Cannot Impose Additional Cleanup at Superfund Sites Without EPA Approval

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On April 20, 2020, the Supreme Court of the United States issued its opinion in *Atlantic Richfield Co. v. Christian, et al.* allowing Montana landowners to pursue state law tort claims for damages within an EPA-managed Superfund site, but requiring EPA approval of any remedial work beyond the originally selected remedy. The case arises out of the Anaconda Superfund site, which encompasses over 300 square miles in Butte, Montana, that became contaminated with arsenic and lead from historic copper smelting operations occurring for the better part of the last century. Cleanup efforts have been ongoing under the supervision of EPA since the site was designated as one of the inaugural Superfund locations in 1983. Over 800 residential and commercial properties have been remediated to date, with \$450 million dollars spent by the owner of the former smelter, Atlantic Richfield, to implement EPA's remedial orders. EPA projects that the cleanup will continue through 2025.

Under Montana state law, a plaintiff making a property damage claim for a personal residence may seek restoration damages in tort, even if the restoration costs exceed the property's diminution in value, where the proceeds will be used to actually remediate the property. Based on that concept, 98 landowners sued Atlantic Richfield seeking restoration costs to implement a plan with more stringent remedial requirements than EPA had deemed necessary, and which were potentially counterproductive to achieving site closure. For example, the landowners' proposed cleanup calls for a soil cleanup target of 15 parts per million of arsenic, rather than the 250 parts per million level set by EPA, and to excavate the top two feet of soil, rather than one foot as EPA proposed. The landowners also sought to capture and treat groundwater through a large underground permeable barrier, a measure that was dismissed by EPA as costly and unnecessary, and moreover risked impacting groundwater quality and flow. In total, the landowners' proposed plan would cost Atlantic Richfield an additional \$50 million to \$58 million.

We [previously highlighted](#) Atlantic Richfield's petition to the Supreme Court, which requested review of a Montana Supreme Court decision allowing the landowners' common law claims for restoration damages to proceed. After concluding it had jurisdiction to hear the case, the Supreme Court held that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) does not deprive Montana state courts of jurisdiction over the landowners' state law restoration claims. The Court further held that CERCLA Section 122 requires EPA approval of the landowners' restoration plan because the landowners are potentially responsible parties under CERCLA.

The Court remanded the case back to Montana state court, opining that an approval process with EPA "could ameliorate any conflict between the landowners' restoration plan and EPA's Superfund cleanup, just as Congress

envisioned.” Accordingly, the ruling affirms EPA’s decision-making authority in federally led cleanup actions under Superfund.

Please do not hesitate to contact Eleni Kouimelis (312-558-5133, ekouimel@winston.com), Matt Walker (312-558-7514, mawalker@winston.com) or your Winston relationship attorney if you have any questions.

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