

Atlantic Research Corp v US – Supreme Court Case on Cost Recovery under Superfund, s. 107(a) of CERCLA

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More on Today's Opinion in *United States v. Atlantic Research Corp.*

Posted by Amy Howe at 06:33 PM

[Note: This recap was authored by Kevin Eide, a summer associate at Akin Gump and a student at the University of Texas Law School.]

Can a potentially responsible party (PRP) that voluntarily cleans up a polluted site in accordance with CERCLA, but without being subject to a state or federal environmental enforcement action or EPA supervision, recover a portion of its clean-up costs from other PRPs under Section 107(a) of CERCLA? In a unanimous decision authored by Justice Thomas, the Court's answer to that question today was "yes."

[Note: For more background on the case, you can read [Sarah Rispin's](#) pre-argument discussion [here](#) and her thoughts on oral arguments [here](#).] From 1981 to 1986, respondent Atlantic Research Corporation – pursuant to a contract with the U.S. government – retrofitted rocket motors at a facility in Camden, Arkansas. As a result of its work, both the soil and the groundwater became badly contaminated with residue from the rocket propellant used in the motors. Although it was not subject to either state or federal enforcement actions or EPA supervision, Atlantic Research acknowledged the high levels of contamination and voluntarily cleaned up the site in accordance with CERCLA.

Seeking to recover a portion of its clean-up costs, Atlantic Research filed a lawsuit in federal district court against the United States pursuant to Sections 107(a) and 113(f)(1) of CERCLA, arguing that the United States was a PRP. Its negotiations with the government halted after the Supreme Court issued its opinion in *Cooper Industries, Inc. v. Aviall Services, Inc.*, holding that a party could only attempt to obtain contribution under Section 113(f)(1) during or following a state or federal enforcement action. Because Atlantic Research had voluntarily cleaned up the site in Arkansas and had not been subject to an enforcement action, *Cooper Industries* prevented it from pursuing its Section 113(f)(1) contribution action. In response, Atlantic Research amended its complaint to rely entirely on Section 107(a) and federal common law. Citing pre-*Cooper Industries* Eighth Circuit precedent holding that Section 113(f)(1) provided the exclusive remedy for a liable party such as Atlantic Research, the United States successfully moved to dismiss the amended complaint.

On appeal, the Eighth Circuit reversed, revisiting its precedent in light of *Cooper Industries*. It held that Section 113(f)(1) does not provide the exclusive remedy for liable parties such as Atlantic Research, and that a party that has voluntarily cleaned up a site may seek to recover a portion of its costs from other potentially responsible parties under Section 107(a). The United States filed a petition for certiorari seeking reversal of the Eighth Circuit's decision.

The Court's analysis of whether Section 107(a) grants a pre-enforcement contribution right to parties, such as Atlantic Research, that voluntarily clean up Superfund sites

focused on what was meant by “other person[s]” in Section 107(a)(4)(B). In a straightforward analysis of the statute’s language and structure, the Court rejected the government’s argument that only non-PRPs could bring suit under the contested provision. According to the Court, the government’s reading of the statute made “little textual sense” and would render Section 107(a)(4)(B) a dead letter. The Court instead agreed with Atlantic Research’s reading of the statute, concluding that “the plain language of subparagraph (B) authorizes cost-recovery actions by any private party, including PRPs.”

The Court rejected the Government’s argument that such an interpretation would create friction between Section 107(a) and Section 113(f), instead clarifying that the two provisions provide remedies to persons in different procedural circumstances. The Court explained that Section 113(f) creates a right to contribution as that term is used in the common law, but that Section 107(a), on the other hand, authorizes another kind of action that simply permits a PRP to recover the voluntary clean-up costs incurred by the PRP in the absence of an enforcement action.

Today’s opinion will be good news to PRPs who would like to clean up polluted sites even though they have not yet been required to do so. The Court left one, related, issue open, reserving judgment on whether clean-up costs incurred by a PRP pursuant to a consent decree following an EPA administrative enforcement action are recoverable under Section 107(a), Section 113(f), or both.