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Supreme Court Authorizes Private Party Recovery Under CERCLA

In a decision released June 11, *US v. Atlantic Research Corporation*, 551 US. ____ (2007), the Supreme Court held that § 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9607(a), provides potentially responsible parties (PRPs)¹ with a direct cause of action to recover voluntarily incurred clean up costs from other PRPs. The Court also suggested that cleanup costs incurred involuntarily are recoverable under CERCLA, but did not decide if such costs were recoverable under § 107(a), § 113(f), or both.

This decision resolves part of an issue that the Court left open in *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157 (2004). In *Aviall*, the Court held that CERCLA § 113(f) allows a PRP to initiate a contribution action only “during or following” a civil action under CERCLA § 106 or § 107(a)² or when the PRP has settled its liability with the Government under § 113(f)(3)(B).³ The *Aviall* decision did not address whether a PRP could have a direct or implied cause of action under CERCLA § 107(a). *Aviall*, 543 U.S. at 161.

U.S. v. Atlantic Research Corp. addresses that issue and holds that § 107(a) provides PRPs with a direct cause of action against other PRPs to recover voluntarily incurred CERCLA response costs.

The Court explained that contribution actions, traditionally and under CERCLA § 113(f), are based upon a claim of unfair distribution among liable parties of an established common liability to a third party. Slip Op. *8-9. “Hence, a PRP that pays money to satisfy a settlement agreement or court judgment may pursue § 113(f) contribution. But by reimbursing response costs paid by other parties, the PRP has not incurred its own costs of response and therefore cannot recover under § 107(a).” Slip Op. *9.

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On the other hand, the Court held that when a PRP performs a voluntary cleanup it incurs response costs directly and can directly sue other PRPs for those costs, as provided by § 107(a)(4)(B). Slip Op. at *5-6.

The Court recognized “that a PRP may sustain expenses pursuant to a consent decree following a suit under § 106 or § 107(a)” and that these expenses are neither voluntarily incurred nor do they reimburse costs incurred by another party. But the Court expressly declined to decide whether such legally compelled response costs “are recoverable under § 113(f), § 107(a), or

both.” Slip Op. *10 n. 6. Clearly, suits involving such costs will hereafter contain claims under both sections of CERCLA.

The full text of the *Atlantic Research* decision is available at the Supreme Court's Web site, see <http://www.supremecourtus.gov/opinions/06slipopinion.html>.

¹ PRPs are those entities identified in §§ 107(a)(1)-(4), 42 U.S.C. §§ 9607(a)(1)-(4).

² 42 U.S.C. § 9613(f)(1).

³ 42 U.S.C. § 9613(f)(3)(B).