Supreme Court Unanimously Confirms Private Parties' Right to Cost Recovery Under CERCLA

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Breaking Developments In Environmental Law

On June 11, 2007, the Supreme Court unanimously held that private parties who voluntarily clean up polluted sites can sue other liable parties for cost recovery under the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). The decision in *United States v. Atlantic Research Corp.* confirms this important right, which before this decision was highly uncertain.

The uncertainty in the law was created by the Supreme Court's 2004 decision in *Cooper Industries, Inc. v. Aviall Services, Inc.*, which held that parties suing each other for contribution under CERCLA § 113 could only do so after having been sued by the Environmental Protection Agency or another potentially responsible party under §§ 106 or 107 of the statute. This meant parties could only sue one another under CERCLA's contribution provision if they had been sued first, and if they hadn't, could not use §113 to recover their costs. The *Cooper Industries* Court refused to decide whether these "volunteers" could instead sue under the cost recovery section of the statute (§ 107) for reimbursement of their costs, leaving open whether "volunteers" had any remedy under the statute.

The *Atlantic Research* case required the Court to answer the question it left open in *Cooper Industries*. The Court found the plain language of § 107 allowed private parties, whether or not liable under CERCLA, to sue other liable parties to recover costs incurred in cleaning up a site. The Court's decision is an important one, for it is a unanimous confirmation that parties who voluntarily clean up contaminated sites can recover their costs from those actually responsible for contamination at the Site. This furthers CERCLA's policy of expediting cleanups by encouraging voluntary cleanups. With the important incentive of cost recovery, voluntary cleanups under CERCLA are likely to occur more often.

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