



## Atlantic Richfield Company v. Christian - One Year Later

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Following the United States Supreme Court's decision in *Atlantic Richfield Company v. Christian*, commentators warned the decision would allow a new category of state law actions challenging EPA-approved clean-ups. One year later, *Christian* does not seem to have opened the flood gates to new litigation, but it may serve to narrow federal jurisdiction over environmental clean-ups.

In *Christian*, 98 Montana landowners, who were within the boundaries of a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Superfund site, brought suit in state court asserting various state law claims related to pollution damage to their property. Part of the damages sought were "restoration" damages, which were meant to restore the landowners' property to its pre-contaminated condition. Under Montana law, a landowner may seek not only tort damages for diminution in property value, but also restoration damages, even if such efforts are greater than those deemed necessary by EPA. Restoration damages are unique to Montana state law (no other states recognize such damages).

The United States Supreme Court, without ruling whether the landowners in *Christian* were entitled to restoration damages, held that CERCLA does not deprive Montana state courts of jurisdiction over plaintiffs' state law restoration claims, and remanded the case back to the Montana state court.

On remand, the Supreme Court of Montana restated the United States Supreme Court's ruling with regard to restoration damages: Atlantic Richfield may be liable for the landowners' remediation beyond what is required under CERCLA, but only if the landowners "first obtain EPA approval for the remedial work they seek to carry out." *Atl. Richfield Co. v. Montana Second Judicial District Court*. Any further remedial action for which Atlantic Richfield may be liable must first be authorized by the EPA as "such action cannot be taken in the absence of EPA approval." *Id.* The Montana Supreme Court then remanded the matter to the Montana District Court for further proceedings on the landowners' claims.

*Christian* is important not only because of its potential to broaden the ability to challenge an EPA clean-up, but because it defined the scope of federal jurisdiction under CERCLA § 113(b). As the United

States Supreme Court held, Section 113(b) of CERCLA, which grants federal courts exclusive jurisdiction over cases arising under CERCLA, does not deprive state courts of jurisdiction to hear state law claims for restoration damages, because those claims do not arise under CERCLA.

Since *Christian*, the scope of Section 113(b) was addressed by *City of Visalia v. Mission Linen Supply, Inc.*, in which the City of Visalia, California sought a declaration that remediation projects at a contaminated property under a remediation order by the California Department of Toxic Substances Control were subject to certain state law bidding procedures. Relying on *Christian*, the Court held that, because the City of Visalia's complaint did not bring any claims arising under CERCLA, Section 113(b) does not strip jurisdiction from the California state courts.

As a result of *Christian*, it remains to be seen whether more state court cases will be brought seeking environmental clean-ups at Superfund sites, and, as a consequence, whether landowners will seek EPA-approval for remediation claims.

*Atlantic Richfield Company v. Christian*, 140 S.Ct. 1335 (April 20, 2020).

*Atlantic Richfield Company v. Montana Second Judicial District Court*, 2020 WL 3432963 (June 23, 2020).

*City of Visalia v. Mission Linen Supply, Inc.*, 2020 WL 25546763 (E.D. CA. - May 20, 2020).

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