

17-1498 ATLANTIC RICHFIELD CO. V. CHRISTIAN

DECISION BELOW: 408 P.3d 515

LOWER COURT CASE NUMBER: OP 16-0555

QUESTION PRESENTED:

In a divided decision that conflicts with decisions of federal courts of appeals nationwide, the Supreme Court of Montana held that landowners can pursue common-law claims for "restoration" requiring environmental cleanups at Superfund sites that directly conflict with EPA-ordered cleanups at these sites. The Montana court reached that result for one of the largest, oldest, and most expensive Superfund sites in the country, the Anaconda Smelter site. The court ignored EPA's views that the Superfund statute-the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)-barred the restoration claims and that plaintiffs' preferred remedies would *hurt* the environment. The state court's holding throws remediation efforts at Anaconda and other massive sites into chaos and opens the door for thousands of private individuals to select and impose their own remedies at CERCLA sites at a potential cost of many millions of dollars per site.

The questions presented are:

1. Whether a common-law claim for restoration seeking cleanup remedies that conflict with EPA-ordered remedies is a "challenge" to EPA's cleanup jurisdictionally barred by § 113 of CERCLA.
2. Whether a landowner at a Superfund site is a "potentially responsible party" that must seek EPA's approval under CERCLA § 122(e)(6) before engaging in remedial action, even if EPA has never ordered the landowner to pay for a cleanup.
3. Whether CERCLA preempts state common-law claims for restoration that seek cleanup remedies that conflict with EPA-ordered remedies.

CERT. GRANTED 6/10/2019