

SCOTUS Opinion: Court Upholds EPA's Superfund Cleanup Plan Against Challenge

21 Apr 2020

For decades, a copper smelter in Montana contaminated approximately 300 square miles of land with arsenic and lead. The Environmental Protection Agency, working with the current owner of the smelter, instituted a cleanup plan under Superfund. Unhappy with the plan and its progress, nearby landowners filed suit in state court, lodging common law claims for damage to their properties, as well as for restoration damages, which were more comprehensive than what the EPA's approved plan contemplated. The Montana Supreme Court agreed with the landowners that their case could proceed in state court without EPA approval (as is normally required in cases invoking Superfund). The smelter owner appealed, arguing that the state courts lacked jurisdiction over the landowners' claims, and that the landowners required EPA approval under the Superfund statute before they could pursue any restoration.

In an opinion by Chief Justice Roberts, the Court held that it could review the Montana's court's ruling, and that the landowners' claims were properly brought in state court since they did not arise out of the Superfund statute. However, the Court vacated the remainder of the Montana court's ruling, holding that the landowners needed EPA approval before pursuing a restoration plan since they qualified as "potentially responsible parties" under Superfund. Even though the landowners could not be held liable for contamination on their properties, permitting landowners to take restorative action without the EPA's knowledge or consent conflicted with Superfund's goal of instituting comprehensive cleanup plans, and thus they were potentially responsible parties that needed the EPA's approval to proceed. Justice Alito concurred in part, arguing that the state courts lacked jurisdiction to consider the landowners' effective challenge to the EPA-approved Superfund plan. Justice Gorsuch, joined by Justice Thomas, dissented in part, arguing that Superfund did not preclude state-based actions for restoration of contaminated lands. A link to the decision in *Atlantic Richfield Co. v. Christian* is here:

https://www.supremecourt.gov/opinions/19pdf/17-1498_8mjp.pdf

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