

## United States Supreme Court Allows Recovery For Voluntary Cleanups

In a ruling encouraging cleanup of toxic waste sites, on June 11, 2007, the United States Supreme Court authorized companies that voluntarily remediate contaminated property to recover their cleanup costs from other waste contributors. The unanimous decision in *United States v. Atlantic Research Corp.*, authored by Justice Clarence Thomas, holds that the plain language of Section 107(a)(4)(A) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) allows even those parties that contributed waste to recover at least some of their cleanup costs. The ruling, which follows the Court's April 2007 decision addressing global warming, encourages private parties to clean contaminated sites voluntarily, as they can now file suit in federal court to share the costs with other responsible parties.

*United States v. Atlantic Research Corp.* clarifies a 2004 Supreme Court case that limited contribution actions under CERCLA section 113(f) only to those parties that were

defendants in CERCLA proceedings initiated by the federal or state government. In the 2004 case ( *Cooper Industries, Inc. v. Aviall Services, Inc.*), the Court left open whether or not liable parties who cleaned sites voluntarily could sue under CERCLA. After *Aviall*, three federal courts of appeals, including the Seventh Circuit, which covers Illinois, held that responsible parties could indeed recoup their voluntary cleanup costs under CERCLA section 107. The Fourth Circuit disagreed. The Supreme Court granted review of *United States v. Atlantic Research* to resolve the dispute among the lower courts.

The Court interpreted CERCLA's "any other person" language to mean that any private party that has incurred cleanup costs may sue under section 107(a)(4)(B). The Court rejected the contention by the defendant, the United States, that allowing a section 107 action would create unnecessary friction and overlap between CERCLA sections 107 and 113. The Court explained that a contribution action under CERCLA section 113(f) is a remedy for companies that have been sued by the government to share their liability. By contrast, a cost recovery action under section 107 is available to a party that has incurred cleanup costs without any established liability to a third party. The Court added that a section 107 action for voluntary cleanup costs still allows for equitable distribution of liability

among multiple waste contributors.

Now that the law is clear, landowners concerned about contamination, whether it threatens health, interferes with development, or reduces land value, have greater incentive to clean their properties on their own. As long as the landowner can identify any party that contributed to the contamination, it has a federal cause of action for cleanup costs under CERCLA. Even if the landowner is responsible for some of the contamination, as long as it follows certain published procedures in remediating the land (known as the National Contingency Plan), it can now recover at least a portion of costs in federal court from other waste contributors.

