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# ASK AN ATTORNEY

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***Q** If I own contaminated property, does the recent United States Supreme Court Opinion in United States v. Atlantic Research Corp., slip op. (U.S. June 11, 2007), matter to me?*

**A** Yes. In United States v. Atlantic Research Corp., the Supreme Court clarified that a person (such as a current property owner) who voluntarily remediates property contaminated with hazardous substances may seek to recover his or her cleanup costs from other potentially responsible parties (PRPs) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 et seq., even if the remediation is not compelled by governmental action. Until this decision was issued, substantial uncertainty existed as to whether such claims could

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be brought. Indeed, in PA, NJ and DE, such claims appeared to be foreclosed because of a Third Circuit Court of Appeals decision.

CERCLA defines four categories of PRPs and makes them liable for a range of costs incurred to clean up property where there has been a release of hazardous substances. These categories of PRPs, including owners and operators of property, are liable whether or not they have any fault for contaminating the property. Section 107(a) of CERCLA provides for direct cost recovery claims "for costs of response incurred by any other person consistent with the national contingency plan." In 1986, Congress added Section 113(f) to CERCLA, which authorizes one PRP to sue another for contribution in certain circumstances. In a series of subsequent decisions by the lower courts, virtually all-private claims for response costs under CERCLA were construed to be claims for contribution.

However, the ability to bring private claims for response costs was dealt a significant set back in Cooper Industries, Inc. v. Aviall Services, Inc., 543 U.S. 157 (2004), where the United States Supreme Court held that PRPs only have Section 113 contribution claims if they are or have been the subject of a Section 106 or 107 action. Thus, after Cooper Industries, there was much uncertainty about whether private parties, particularly a PRP who voluntarily cleans up a site without having been forced to as a result of a government lawsuit, would be able to recover any of his or her cleanup costs from other PRPs. The Circuit Courts of Appeals were split on this issue, with some courts holding that Section 113 provided the exclusive cause of action available to PRPs, while other courts permitted direct Section 107(a) actions by PRPs. The resulting uncertainty has been a disincentive to voluntarily clean up contaminated sites.

With the issuance this week of the Supreme Court's Opinion in Atlantic Research Corp., this uncertainty has been removed. Accordingly, parties who voluntarily clean up their sites can now be assured that they have the option of instituting suit against other responsible parties to recover some or all of their cleanup costs.

**Jill Hyman Kaplan is a partner with Manko, Gold, Katcher & Fox, LLP. She has a wide range of experience in environmental counseling and litigation. Her current practice includes matters relating to brownfields redevelopment, environmental aspects of RE development and management; environmental, health and safety audits; asbestos, mold and indoor air quality; lender liability; environmental insurance; hazardous and non-hazardous waste regulations; storm water; OSHA issues, and site contamination and cleanup. Kaplan serves as a Board member of the Arden Theatre Company. Kaplan is a past chair of the Environmental, Mineral and Natural Resources Law Section of the Pennsylvania Bar Association.** ■