

Roundtable #1: Analysis of State Program Impacts Resulting from U.S. Supreme Court Decisions in Cooper v. Aviall and U.S. v. Atlantic Research

In Cooper Industries, Inc. v. Aviall Services, Inc., 543 U.S.157 (2004), the Supreme Court held that private parties could seek contribution under Section 113(f)(1) only “during or after” a civil action. Left open was the question whether PRPs had cost recovery rights under § 107(a). Historically the position of the U.S. was that PRPs did not have cost recovery rights under § 107(a). Pre-Aviall the U.S. and most courts believed that PRPs could recover their costs for voluntary cleanups of Superfund sites through contribution actions brought under CERCLA § 113.

- Subsequent case law led to a split in the Circuit Courts concerning a PRP’s § 107 cost recovery rights.
- The Supreme Court’s decision in **United States v. Atlantic Research Corporation**, 172 S.Ct. 2331, (2007) (“ARC”) resolved the Circuit split by holding PRPs have a § 107 right.
- In ARC, a unanimous Supreme Court held that under the plain terms of CERCLA Section 107(a)(4)(B), PRPs are able to recover costs from other PRPs.

Key Points: The Supreme’s Court’s decision in ARC held that PRPs who voluntarily clean up a Superfund Site have a CERCLA § 107 right, but the Court’s decision has raised more questions than it answered, including:

- How and under what circumstances can PRPs use CERCLA § 107?
- Whether PRPs who clean up a Superfund site pursuant to a judicial settlement, an administrative agreement, or an order may bring a claim under CERCLA § 107?
- Is a PRP who brings a claim under CERCLA § 107 able to seek joint and several liability for cost recovery ?

Post-ARC Issues Impacting Brownfields and Voluntary Clean up Programs

- The ARC decision will make it easier for those who perform voluntary Superfund cleanups using CERCLA to bring a claim for recovery of costs, particularly PRPs who perform this valuable work.

