

United States v. Atlantic Research Corp. (U.S. Supreme Court)  
Decided June 11, 2007.

The Supreme Court made one of the most significant rulings on the Superfund law (CERCLA) in years this June in a unanimous decision written by Justice Thomas. The Court laid to rest major uncertainties it had created regarding the ability of private parties to sue for contribution from other parties after a voluntary cleanup of contamination.

In 2004, the Court ruled in Aviall Services, Inc. v. Cooper Industries Inc. 543 U.S. that a responsible party (RP) who voluntarily cleaned up a site was limited to two statutory conditions under the Superfund in order to proceed with a "113" "contribution" action. Under section "113," the *only* time a RP could sue for contribution was 1) after it had been sued or 2) if there had been a settlement resolving liability with the United States. That left RPs in a predicament where they might not be able to recover a portion of their "voluntary" cleanup costs from other RPs.

The Aviall Court declined to decide whether a contribution action was impliedly allowed in a "107" action. The Atlantic Research decision resolves the uncertainty remaining after Aviall favorably for the RP, providing a long sigh of relief to industry and states. Section "107" of CERCLA identifies which parties are responsible for contamination and makes them liable for costs incurred by the US government, a state, or Indian tribe (Section A) and "any other costs of response incurred by any other person ..." (Section B). The Court held that sections A and B identified who can sue for cleanup costs. Section B — "any other costs of response incurred by any other person ..." — is so broad as to include a party who has engaged in a voluntary cleanup.

The Bush Administration argued *against* such a reading because Atlantic Research sought to recover some of its response costs against the government. Atlantic Research had retrofitted rockets for the government on property *operated by the Department of Defense*. The Court said "Reading the statute in such a manner suggested by the Government would destroy the symmetry of the sections 107(a)(4)(A) and (B) and render subparagraph (B) internally confusing." The government's attempt to immunize itself failed. The delays and disincentives that arose after the Aviall decision made recoveries for voluntary cleanups uncertain have finally been removed.