

Message

From: Genovese, Robert (BP) [Robert.Genovese@bp.com]
Sent: 1/5/2018 3:36:43 PM
To: Benevento, Douglas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=93dba0f4f0fc41c091499009a2676f89-Benevento,]; Kelly, Albert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08576e43795149e5a3f9669726dd044c-Kelly, Albe]
Subject: Montana Supreme Court opinion: Christian v Atlantic Richfield
Attachments: Christian v. AR - MT Supreme Court Opinion and Order.pdf; OP 16-0555 Amicus -- Brief.pdf

Doug and Kell,

I hope that you are doing well and had a relaxing break during the holidays.

Last week, the Montana Supreme Court issued the attached decision in the *Christian v Atlantic Richfield* case. The court ruled against Atlantic Richfield and rejected the views expressed by the Department of Justice in the amicus brief that the United States filed in the case. Atlantic Richfield had petitioned the Montana Court to hold that private landowners cannot use state law to require Atlantic Richfield to perform a remedy at the Anaconda NPL site that would be materially different than the clean up program that EPA has directed for over 30 years. As you know, under CERCLA, only the EPA has the authority to determine the remedy for a superfund site.

The Montana Supreme Court's decision opens the door for private landowners in Montana to develop their own remedies and to sue cooperating Potentially Responsible Parties to fund these disparate remedies even if they conflict with the EPA's selected remedy. Not only does this ruling challenge the EPA's authority under CERCLA to determine the appropriate environmental remedy, but it also undermines the integrity of the consent decree process in Montana since the regulated community cannot rely upon the remedy that the EPA selects to implement through a consent decree. A PRP could face an unending litany of conflicting remedies arising from private lawsuits that make it impossible to complete the clean up. This ruling creates a significant policy and legal matter for the EPA.

Atlantic Richfield intends to file a petition for writ of certiorari with the U.S. Supreme Court by the end of March. The Solicitor General will have the opportunity to submit an amicus brief in the U.S. Supreme Court supporting the company, which would be due at the end of April. In addition, the U.S. Supreme Court may request the views of the Solicitor General in response to the company's petition.

Obtaining review by the US Supreme Court is a difficult undertaking. Nonetheless, Atlantic Richfield believes that the case is worthy of Supreme Court review and that Supreme Court review is necessary to protect the interests of the United States. The odds of review would increase significantly if the Department of Justice files an amicus brief in support of Atlantic Richfield's petition for a writ of certiorari.

The United States previously filed an amicus brief in support of Atlantic Richfield in the State court proceeding and made oral arguments before the Montana Supreme Court. The DOJ's amicus brief for the State court proceeding is attached.

I would like to arrange a phone call with you to discuss this case and possible next steps to consider support from the EPA for a Supreme Court review of this matter. I think it would be efficient if the three of us could talk along with our legal advisors.

Let me know if you are open to scheduling a call during the next two weeks. If so, I will work with your assistants to arrange a time.

Best Regards,

Bob Genovese

President

Atlantic Richfield Company

Email robert.genovese@bp.com

Phone **Personal Matters / Ex.**