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Top Court Revives Guam's Superfund Cost Claim Against U.S.

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- Guam, U.S. debated claims for municipal landfill cleanup costs
- High court reversed D.C. Circuit's decision

Guam may pursue a Superfund cost recovery claim against the federal government for a \$160 million landfill cleanup as its action was timely, the U.S. Supreme Court said Monday in a significant victory for the territory.

In a unanimous [decision](#), the justices reversed a lower court and said Guam isn't time-barred from pursuing the claim.

"We are thrilled with the Court's decision in favor of Guam today, which paves the way for the United States to pay its fair share for the cleanup of the Ordot Dump," Latham & Watkins lawyer Greg Garre, representing Guam, said in an email.

The opinion could affect parties facing non-Superfund claims they thought were time-barred, potentially exposing them to liability if those claims are revived, said Duke K. McCall III, partner at Morgan, Lewis & Bockius LLP in Washington.

"That's something to keep an eye on," he said.

Guam and the U.S. signed a consent decree under the Clean Water Act in 2004 requiring the territory to stop waste in the formerly Navy-owned Ordot Dump from leaching into adjacent rivers and the Pacific Ocean. Guam later filed a claim under federal Superfund law to recoup some cleanup costs from the federal government.

But the U.S. Court of Appeals for the D.C. Circuit decided last year that the Clean Water Act settlement triggered another Superfund provision, and the statute of limitations on that had already run—preventing Guam from attempting to recover any costs.

The Supreme Court reversed the lower court's ruling and said an environmental liability settlement must resolve a Superfund-specific liability to trigger the Superfund provision for contribution claims. Justice Clarence Thomas, writing for the court, said that's "the most natural reading" of the statute.

The court's opinion finally provides clarity on that point, said Carolyn L. McIntosh, partner at Squire Patton Boggs LLP in Denver.

"Now the principles are clearly articulated," she said in an email.

Doug Arnold, partner at Alston & Bird LLP in Atlanta, said he was struck by the fact that the court was unanimous, and that the opinion gave "very short shrift" to the federal government's arguments.

"It's a polite way of the court saying it wasn't even a close call," he said.

The Environmental Protection Agency, which manages Superfund sites, referred questions about the ruling to the Justice Department. DOJ declined to comment.

Future Liabilities

Husch Blackwell LLP attorney Joseph S. Diedrich, who represented states and territories in support of Guam, praised the high court's ruling for holding the U.S. accountable and avoiding an outcome that would discourage settlements.

"It ensures that the United States, when it's partially responsible for contamination at a site, that it can't exploit its dual role as both a regulatory and a responsible party to evade liability," he said in an interview.

The opinion also aligns with the court's ongoing emphasis on following the plain language of the statute, said Ann Al-Bahish, partner at Haynes and Boone LLP in Houston.

Halliburton Affiliates LLC and more than a dozen other companies, who claim a contribution action by another group of companies wasn't filed within the applicable statute of limitations, asked the court to take up their [petition](#) in connection with the Guam case.

Atlantic Richfield filed a similar [petition](#) in February in connection with a Superfund site in Montana. The court has yet to announce how it will address those petitions.

Guam acquired the Ordot Dump from the U.S. Navy in 1950 when its newly established civilian government took over. The territory operated the landfill for the next 60 years, according to the Justice Department.

The case is [Territory of Guam v. United States](#), U.S., No. 20-382, 5/24/21.