No. 06-562

IN THE
Supreme Court of the United States

United States of America,
Petitioner,

v.

Atlantic Research Corporation,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF THE UNITED STATES CONFERENCE OF MAYORS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE*[1]

Amicus curiae The United States Conference of Mayors ("USCM") is the official nonpartisan organization of all United States cities with populations of more than 30,000. USCM's member cities are home to hundreds of sites on the Environmental Protection Agency's ("EPA's") National Priority List ("NPL") as well as tens of thousands of brownfields—abandoned or underutilized properties whose redevelopment is complicated by either real or perceived environmental contamination.

The existence of many brownfield sites can be traced to the strict liability provisions imposed by Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund"), 42 U.S.C. § 9601 et seq, which also governs how these sites must be cleaned up before they can be returned to beneficial use. Congress recognized the unintended consequences that resulted from Superfund in 2003, when it passed the Small Business Liability and Brownfields Redevelopment Act, Public Law 107–118 (H.R. 2869) ("Brownfields Act"). The Brownfields Act's purpose was to assist in the cleanup of brownfield sites by granting liability protection for innocent purchasers interested in redeveloping these sites, as well as assessment and cleanup funds for other sites. At the same time, as part of the Brownfields Act, Congress enhanced the State Voluntary Cleanup Program which encourages the voluntary cleanup of environmentally contaminated sites.

Still, the current uncertainty over whether CERCLA section 107(a) allows property owners to recover for monies

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[1] This brief is filed with the written consent of all parties. Pursuant to Rule 37.6, no counsel for either party authored this brief in whole or in part, nor did any party make a monetary contribution to the preparation or submission of this brief.

spent in voluntarily cleaning up these sites means that only a small fraction of brownfields are cleaned up each year. USCM feels that it is of vital interest to the nations' cities that the legal landscape be clarified so that owners of contaminated sites that wish to voluntarily undertake cleanup are able to do so with the knowledge that they can recover other parties' proportionate share of the liability. USCM respectfully urges the affirmance of *Atlantic Research Corp. v. United States*, 459 F.3d 827 (8th Cir. 2006), in which the Eighth Circuit held that CERCLA section 107(a)(4)(B) enables parties that voluntarily undertake remediation of Superfund sites to sustain pre-enforcement cost-recovery or contribution actions against other potentially responsible parties ("PRPs").

SUMMARY OF ARGUMENT

The United States Conference of Mayors supports the Eighth Circuit's interpretation of CERCLA section 107(a) as allowing a pre-enforcement contribution right. Allowing PRPs to recover remediation costs from other PRPs is critical to accomplishing Congress's central goal of encouraging voluntary cleanups of contaminated sites. Voluntary cleanups are, in turn, the only way to achieve the goal of cleaning up the thousands of contaminated sites now sitting idle and unusable in the country's cities. The task is simply too large for the federal government to initiate on its own, as Congress recognized two decades ago in passing the Superfund Amendment and Reauthorization Act of 1986 ("SARA"). This also follows from the most natural reading of the law: As a simple matter of statutory construction, section 107(a) grants an implied right of action to those PRPs that voluntarily undertake remediation of contaminated sites.

ARGUMENT

I. The Eighth Circuit's Conclusion that § 107(a) Provides for a Pre-enforcement Right of Action is in

Accordance with the Needs of United States Cities and the Purposes of Superfund

The Eighth Circuit's conclusion that section 107(a) of Superfund allows property owners to recover the costs of remediating contaminated land, even when they undertake that remediation voluntarily before a civil action or enforcement action is brought against them, furthers the goals of Superfund. Congress intended CERCLA to promote the rapid remediation of the nation's contaminated properties. If property owners forfeit their rights of cost recovery by voluntarily cleaning up such properties, it would take literally centuries to remediate the hundreds of thousands of contaminated Superfund sites in this country. Such a result would violate the principle that a statute should not be interpreted so as to lead to absurd results. *Rector, etc., of Holy Trinity Church v. United States*, 143 U.S. 457, 459-60 (1892).

A. Voluntary Cleanups are Critical to Fulfilling CERCLA's Goals

Congress enacted CERCLA in 1980 in response to the serious environmental and health risks posed by industrial pollution found at toxic waste sites across the United States. *United States v. Bestfoods,* 524 U.S. 51, 55 (1998). *See also Exxon Corp. v. Hunt*, 475 U.S. 355, 358–359 (1986). Within five years, however, it was apparent that the federal government could not by itself accomplish the timely remediation of the hundreds of thousands of contaminated sites found in this country. At the time, the federal government estimated that there were approximately 450,000 such contaminated sites in the United States—far more than originally anticipated. U.S. General Accounting Office, *Superfund: Extent of Nation's Potential Hazardous Waste Problem Still Unknown*, GAO/RCED-88-44, Dec. 1987. When Congress considered SARA in 1985, testimony before Congress highlighted the steep costs to the federal government of trying to force PRPs to remediate

contaminated sites. *See, e.g.*, Hearing Before the Senate Committee on Environment and Public Works, H.R. Rep. No. 99-134 at 37 (1985) (statement of John C. Butler III, Director, Putnam, Hayes, and Bartlett, Inc.) (estimating that the transaction costs involved in the government's efforts to have PRPs fund and undertake site response actions at 1,800 sites on the National Priorities List ("NPL") at or above $8 billion in 1985 dollars). As this Court has explained, "Congress did not think it enough . . . to permit only the Federal Government to recoup the costs of its own cleanups of hazardous-waste sites; the Government's resources being finite, it could neither pay up front for all necessary cleanups nor undertake many different projects at the same time." *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 21 (1989), *overruled on other grounds*, *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

For this reason, members of Congress consistently announced their intent to encourage PRPs to engage in voluntary cleanups rather than wait until EPA made its way through its national priority list ("NPL") to force them to clean up. *See, e.g.*, Report of the Senate Committee on Environment and Public Works, S. Rep. No. 99-11 at 76 (1985) (Statement of Senator Syms), *see also Pennsylvania v. Union Gas Co.*, 491 U.S. 1 at 21 ("Some help was needed, and Congress sought to encourage that help by allowing private parties who voluntarily cleaned up hazardous-waste sites to recover a proportionate amount of the costs of cleanup from the other potentially responsible parties."); *FMC Corp. v. AERO Indus.*, 998 F.2d 842, 847 (10th Cir. 1993) (recognizing that Congress sought to "encourage private parties to assume the financial responsibility of cleanup by allowing them to seek recovery from others.").

Voluntary cleanups remain of critical importance to the Superfund scheme. The USCM can speak to the frustrating lack of progress made in its members' own back yards. The 172 cities surveyed in a 2006 USCM study on brownfields

host more than 23,810 brownfield sites, or some 130 per city. *See* The United States Conference of Mayors, *Recycling America's Land, A National Report on Brownfields Redevelopment* Volume VI at 6 (2006). The average size of these sites ranged from five to 15 acres. *Id.*.. The presence of these unremediated brownfields in United States cities shifts new economic activity to undeveloped land outside the cities, for which the legal and environmental risks are perceived to be much lower. As Professor Daniel Esty of the Yale School of Forestry explains, former industrial sites are "shunned by developers, bankers, mortgage lenders, and insurance companies due to fears of potential liability for cleanup costs. These so-called 'brownfields' have become dead zones, while new economic activity shifts to undeveloped land or 'greenfields' where toxic risks are perceived to be much lower." Daniel C. Esty, *Toward Optimal Environmental Governance*, 74 N.Y.U. L. REV. 1495, 1525 (1999).

B. The Absence of Voluntary Cleanups Exacts a Huge Toll on American Cities

These vacant, unused sites exact a huge toll on United States cities. When the greenfields to which industry and developers shift their attention are on the outskirts of cities, the cities are saddled with the cost of building water, sewer, electricity, gas and roads bridging the distance—infrastructure that must be maintained on an ongoing basis. When the greenfields are outside city limits, the cities lose citizens, jobs and tax revenue to surrounding suburbs, making it harder for them to provide services within their borders—and cities still have to pay the cost of connecting the suburbs into the urban infrastructure grid. Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* 150–53 (1985) (noting that because highways, transport systems, and sewers are interjurisdictional, the central city bears a portion of the cost of connecting suburbs to the city). Either way, the tendency of cities to sprawl

toward the periphery—exacerbated by the massive amount of unusable contaminated land lying vacant in city centers—imposes hefty economic and environmental costs. Robert W. Burchell, *The Costs of Sprawl—Revisited* 11 (1998) ("[F]or a fixed number of households, sprawl is the most expensive form of residential development in terms of economic costs, environmental costs, natural resource consumption, and many types of personal costs.").

At present, United States cities struggle to remediate brownfield sites and return them to beneficial use. The 172 cities that responded to the USCM survey have managed to remediate 1409 contaminated sites total, and are currently working on 1,189 more. *Recycling America's Land* at 6. This is a mere drop in the ocean compared to the 23,000 sites in those cities, and the hundreds of thousands of sites that USCM extrapolates are in its 30,000 member cities. The primary reason that progress has been so slow is the lack of cleanup funds, *Recycling America's Land* at 6 (noting that 86% of respondents to the survey cited lack of cleanup funds as an impediment to remediation), as well as the hefty price of cleanups, which run into the millions of dollars for most sites. *See, e.g., Cooper Industries, Inc. v. Aviall Services Inc.*, 543 U.S. 157 (2004) (involving a $5 million remediation); *United States v. DiBiase*, 45 F.3d 541, 542 n.1 (1st Cir. 1995) (cost of cleaning up five-acre wetland disposal area more than $2.25 million); *In re Hemingway Transp. Inc.*, 174 B.R. 148, 161–164 (Bankr. D. Mass. 1994) (land purchased for $1.6 million costs more than $6 million to clean up); *United States v. Md. Bank & Trust Co.*, 632 F. Supp. 573, 575 (D. Md. 1986) (land bought for $381,500 cost more than $5.5 million to clean up); *FDIC, Resolution Trust Corp. Seek Protection in Senate Bill Limiting Exposure Under CERCLA*, 21 Env't Rep. (BNA) 533, 533 (July 27, 1990) (RTC estimate that its 270 contaminated sites would cost $3.7 million each to clean up, in 1990 dollars). This high cost prevents most owners of brownfields sites (as well

as prospective purchasers) from undertaking the remediation of brownfields on their own.

The USCM believes firmly that owners of brownfield sites in their cities will not remediate these sites voluntarily, as Congress wished in enacting SARA, unless they are able to shift the portion of the costs for which other PRPs are responsible onto those PRPs before they are brought into court by the federal government. *Accord* U.S. General Accounting Office, *Environmental Cleanup: Transfer of Contaminated Federal Property and Recovery of Cleanup Costs*, GAO-05-1011R, Oct. 17, 2005 (absence of a clear statement that pre-enforcement contribution actions are allowed "may complicate efforts to clean up contaminated properties by providing a disincentive for parties to voluntarily carry out such cleanups."); *Consolidated Edison Co. of New York v. UGI Utilities, Inc.*, 423 F.3d 90, 100 (2d Cir. 2005) ("Were this economic disincentive in place, such parties would likely wait until they are sued to commence cleaning up any site for which they are not exclusively responsible because of their inability to be reimbursed for cleanup expenditures in the absence of a suit."); *Syms v. Olin Corp*., 408 F.3d 95, 106 n.8 (2d Cir. 2005) (observing that "the combination of *Cooper Industries* and *Bedford Affiliates [v. Sills*, 156 F.3d 416 (2d Cir. 1998)]. . . would create a perverse incentive for PRPs to wait until they are sued before incurring response costs").[2]

Preliminary research by the Northeast Midwest Institute ("NEMWI") confirms that the holding in *Cooper v. Aviall* that pre-enforcement contribution rights are not available under CERCLA section 113(f) "appears to have negatively impacted the cleanup and redevelopment of larger, more

[2] Even if landowners do sue, should they be denied a cause of action for cost recovery simply because they undertook remediation voluntarily, many PRPs responsible for the contamination would escape liability, a result directly contrary to CERCLA's "polluters pay" structure.

complicated brownfields sites, . . . generally slowing cleanup progress, while increasing transaction costs." Northeast Midwest Institute, *Preliminary Research: Impacts of the* Aviall *Supreme Court Decision on Brownfields Cleanups* at 1 (April 5, 2007 Draft). According to NEMWI, the costs are going up and cleanup slowing down at certain sites as owners exit State voluntary cleanup programs and seek to have enforcement actions brought against them so that they can later recover from other PRPs.[3] *Id.* At other sites, where the owners had been pursuing contribution actions before *Cooper v. Aviall*, cleanup has stopped out of fear that the owners cannot recover from other PRPs. *Id.* Cleanups are being taken off the table altogether at sites where "cleanup costs represent a high proportion of total development costs" because of the "greater risk that unanticipated cleanup costs will make the project infeasible[.]" *Id.*

Without a clear statement from the federal courts that they will be able to recover cleanup costs from other PRPs before an enforcement action is brought against them, owners must at present wait for the EPA or a state to bring an enforcement action against them before undertaking these cleanups. Should this status quo continue, the nation's cities will be saddled with the burden of supporting the infrastructure required to reach sprawling development, and suffer the loss of jobs, citizens and their tax base to outlying suburbs. Hundreds of thousands of contaminated sites will remain unremediated, decades after Superfund was enacted. This is clearly not what Congress envisioned.

II. The Text of CERCLA § 107(a) Provides for a Pre-enforcement Right of Action

As the numerous government, environmental and industry groups that have filed amicus briefs in this case on

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[3] Representatives of state voluntary cleanup programs have confirmed to NEMWI that land owners are exiting voluntary cleanup programs and seeking listing on the NPL. *Id.*

the side of Atlantic Research urge, interpreting CERCLA § 107(a) to allow for a contribution right for voluntary cleanups undertaken prior to EPA action against PRPs is not only the correct result from a policy standpoint, but is also provided for in the text of the statute itself. Section 107(a) provides for an implied right of contribution stemming from the joint and several liability it imposes on PRPs. The inclusion of a savings clause in section 113(f) of CERCLA implies that a section 107(a) action remains available for those to whom the specific section 113(f)(1) contribution provision is not available. Further, the implied contribution right in section 107(a) is not limited to parties against whom an enforcement action has been brought. Thus, as a simple matter of statutory construction, section 107(a) grants an implied contribution right to those PRPs that voluntarily undertake remediation of contaminated sites. This interpretation is supported by SARA's legislative history.

A. Section 107(a) expressly provides a right of action between PRPs.

An implied right of contribution is found in CERCLA section 107(a), stemming from the joint and several liability it imposes on four categories of PRPs.[4] *Key Tronic v. United States*, 511 U.S. 809, 816 (1994) ("[CERCLA] expressly authorizes a cause of action for contribution in § 113 and impliedly authorizes a similar and somewhat overlapping remedy in § 107."). The way in which it does so makes it clear that these PRPs are joint and severally liable not just for costs incurred by government entities, but also for costs incurred by other PRPs.

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[4] These include present and past owners of contaminated facilities; operators of contaminated facilities; persons who arranged for disposal of hazardous substances at the facilities; and transporters of the hazardous substance to the facilities. 42 U.S.C. § 9607(a)(4)(B).

CERCLA section 107(a)(4)(A) imposes liability on PRPs for "all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe[.]" 42 U.S.C. § 9607(a)(4)(A). The next section, CERCLA section 107(a)(4)(B), goes on to impose liability on PRPs for "any other necessary costs of response incurred by *any other person*[5] consistent with the national contingency plan." 42 U.S.C. § 9607(a)(4)(B) (emphasis added). It logically follows that "any other person" must refer to private parties and local parties—that is, "persons" who are not the United States Government, a State, or an Indian tribe. By implication, this section contemplates that private parties and local governments will *incur* costs to remediate Superfund sites. This is the most natural reading of this section of the statute.

This Court has said as much. In *Key Tronic v. United States*, 511 U.S. 809, 818 n.11 (1994) the Court stated that by imposing liability on PRPs for costs "incurred by any other person," section 107(a) "implies . . . that [PRPs] may have a claim for contribution against those treated as joint tortfeasors." Despite these statements of the Court, the United States argues that section 107(a)(4)(B) supplies a cause of action only for "innocent" private parties, which it defines to include owners of adjacent properties (to whose land contamination has spread) or *bona fide* purchasers. Pet. Br. at 15–16. This is a tortured reading at best.

What the United States is arguing is that, because the *subject* of the statutory phrase is PRPs, "any other person" must refer to non-PRPs, i.e., innocent private parties. *Id.* But this is unsound as a matter of both logic and grammar.

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[5] CERCLA defines person to include "an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body." 42 U.S.C. § 9601(21).

What the Government argues is akin to saying, for instance, that if an exam administrator tells students that they may speak to teachers or proctors in the room, but may not speak to "any other person" during the exam, the students may still speak to other students because they, as the subject of that sentence, must be logically be excluded from the group "any other person."

Further, by accepting that "any other person" includes owners of adjacent properties or *bona fide* purchasers, the Government agrees that "any other person" must refer to a class of parties beyond the federal government, states or Indian tribes. Having in effect conceded this, it then relies on the feeblest of logic to imply that that phrase excludes fellow PRPs. If it accepts the former, it must accept that section 107(a)(4)(B) provides a right of action to recover from *all* other persons that may incur cleanup costs, including fellow PRPs.[6] *Accord Metropolitan Water Reclamation District of Greater Chicago v. North American Galvanizing & Coatings, Inc.*, 473 F.3d 824, 835 (7th Cir. 2007) (rejecting United States argument that "any other person" refers only to innocent parties, on grounds that "other" as used in section 107(a)(4)(B) was simply meant to distinguish "any other person" from "the United States, a State or an Indian tribe" as used in the prior paragraph.)

The Government's construction is problematic on other levels, raised by the other amici in this case. First, it would have been of doubtful utility for Congress to impose liability on PRPs for *all* government response costs, but impose

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[6] In fact, the Government has accepted this latter principle in the past. *See* Brief of the United States as *Amicus Curiae*, 5, 20–21 *Cooper v. Aviall,* 543 U.S. 157 (2004) (No. 02-1192) (explaining that "any other person" refers to section 107(a)(4)(B) plaintiffs); Brief of the United States 12, *Key Tronic v. United States*, 511 U.S. 809 (1994) (No. 93-376) (recognizing that petitioner, a private PRP, was authorized by section 107(a)(4)(B) to recover necessary response costs).

liability on them for only that tiny slice of *private-party* response costs incurred by so-called innocent PRPs. Why, in essence, allow for the government and so-called "innocent parties" to obtain money to clean up, but not those PRPs who own or operate the lion's share of Superfund sites? Second, this begs the point, made by the States in their amicus brief, that, when Congress drafted the language in section 107 in 1980, it made no distinction between "innocent" and non-innocent PRPs.

B. Section 107(a) was not vitiated by the 1986 Superfund Amendments.

As this Court stated in *Key Tronic*, 511 U.S. at 818 n.11, by imposing liability on PRPs for costs "incurred by any other person," section 107(a) "implies . . . that [PRPs] may have a claim for contribution against those treated as joint tortfeasors." This provision remains in effect, despite the addition of section 113(f) to Superfund in SARA. *See Key Tronic*, 511 U.S. at 816 (noting that section 113(f) provides a "similar and somewhat overlapping remedy" to that provided in section 107(a)). *Accord Cooper v. Aviall*, 543 U.S. 157, 163 n.3 (2004) (reaffirming *Key Tronic's* recognition of a 'cost recovery remedy of § 107(a)(4)(B)" that is "clearly distinct" from that of section 113(f)(1)).

Section 113(f) provides that: "Any person may seek contribution from any other person who is liable or potentially liable under section 9607 (a) of this title, during or following any civil action under section 9606 of this title or under section 9607 (a) of this title." 42 U.S.C. § 9613(f). The legislative history and text of this provision shows that Congress intended the provision to add to, and not eviscerate, the right of cost recovery in section 107(a).

During the first years that Superfund was in effect, the lower courts disagreed on whether section 107(a) provided an implied right of action between PRPs. *See Cooper v. Aviall*, 543 U.S. 162–63 (describing disagreement). Most, however,

agreed that section 107 did afford PRPs an implied right of action. *Compare Walls v. Waste Res. Corp.*, 761 F.2d 311, 318 (6th Cir. 1985) (allowing cost recovery under section 107(a) as consistent with the language of the section and Congress' purpose in enacting CERCLA); *Wickland Oil Terminals v. Asarco,* Inc., 792 F.2d 887, 889–90 (9th Cir. 1986) (same); *United States v. Ward*, 1984 WL 15710, at *1–2 (E.D.N.C. May 14, 1984) (same); *Bulk Distribution Ctrs., Inc. v. Monsanto Co*., 589 F. Supp. 1437, 1443 (S.D. Fla. 1984) (same); *Jones v. Inmont Corp.,* 584 F. Supp. 1425, 1428–29 (S.D. Ohio 1984); *City of Philadelphia v. Stepan Chemical Co.,* 544 F. Supp. 1135, 1140–1143 (E.D. Pa. 1982) (same); and *United States v. New Castle County*, 642 F. Supp. 1258, 1261–1269 (D. Del. 1986) (same); with *United States v. Westinghouse Electric Corp.,* 1983 WL 160587 (S.D. Ind. 1983) (disallowing cost recovery under section 107(a)). In light of this uncertainty, Congress included section 113(f) in SARA to clarify and confirm the right of contribution that courts had been implying under section 107(a). *See, e.g.*, Report of the Senate Environment and Public Works Committee, S. Rep. 99-11 at 43 (1985) (language meant to "clarify[y] and confirm[] existing law to provide right of contribution).

But Congress did not *supersede* section 107(a) with the addition of section 113(f). The drafts of SARA being circulated in the Senate amended section 107 (to clarify and confirm the contribution right) but did not add a separate section. *See, e.g.*, Report of Senate Committee on Environment and Public Works at 43 (proposing an amendment that "clarifies and confirms existing law governing liability of potentially responsible parties by adding a new subsection 107(e)"). This course was later abandoned, in favor of adding an additional clause in the form of section 113(f), as proposed in the original House drafts. *See, e.g.*, Report of the Committee on Energy and Commerce, H. R. Rep. No. 99–253 at 79 (1985) (explaining

that a proposed section 113(f) "confirms a Federal right of contribution or indemnification for persons alleged or held to be liable under section 106 or 107 of CERCLA"). The fact that section 107(a) survives shows that section 113(f) was meant to supplement, rather than supersede section 107(a).

C. Section 107(a)'s right of action is not time-limited.

If section 107(a)(4)(B) provides a right of action between fellow PRPs, that right of action is not time-limited. In other words, section 107(a)(4)(B) liability attaches whether or not an enforcement action has been brought against the PRPs that undertake a cleanup. This is implied by the fact that section 113(f), which operates independently from but simultaneously with section 107(a), is specifically limited to persons against whom enforcement actions have been brought, but section 107(a) does not.

Section 113(f) limits the timing of the contribution action that may be brought thereunder to "during or following any civil action . . . ." 42 U.S.C. § 9613(f)(1). This was the express holding of this Court in *Cooper v. Aviall Industries,* 543 U.S. 157 (2004). By contrast, section 107(a) contains no such language. It merely imposes liability for cleanup costs incurred by "any other person," without delimiting it to any specific time period or conditioning it upon a further trigger event. 42 U.S.C. § 9607(a)(4)(B).

In fact, Congress considered and rejected a version of SARA that would have imposed the same delimiting rules on section 107(a) that governed section 113(f). The Reagan Administration submitted a proposal that section 107 be amended to include the specification that "[a]ny contribution action brought under this paragraph shall be brought in accordance with section 113." *See* Communication from the President of the United States Transmitting a Draft of Proposed Legislation to Amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 at 24 (Feb. 26, 1985). The enacted version of section

107 does not contain this language. It follows that the right of contribution under section 107 is not limited to the parties against whom a civil action had been brought.

The United States asks that this Court do, in effect, what the Reagan Administration failed to get Congress to do twenty years ago, and limit the right of contribution under both section 113(f) and section 107(a) to all but those against whom a formal civil enforcement action has been brought. We urge this Court to reject that reading.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the brief of respondent, the judgment of the United States Court of Appeals for the Eighth Circuit should be affirmed.

Respectfully submitted,

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