



KeyCite Yellow Flag - Negative Treatment

Not Followed as Dicta [Kara Holding Corp. v. Getty Petroleum Marketing, Inc.](#), S.D.N.Y., September 22, 1999

116 S.Ct. 1251

Supreme Court of the United States

Alan MEGHRIG, et al., Petitioners,

v.

KFC WESTERN, INC.

No. 95–83.

Argued Jan. 10, 1996.

Decided March 19, 1996.

Synopsis

Owner of property contaminated with petroleum products brought action against prior owners under Resource Conservation and Recovery Act (RCRA) for restitution of prior clean-up costs. The United States District Court for the Central District of California, [Harry L. Hupp, J.](#), dismissed. Owner appealed. The Court of Appeals for the Ninth Circuit, [49 F.3d 518](#), reversed and remanded. Certiorari was granted. The Supreme Court, Justice [O'Connor](#), held that citizen suit provision of RCRA does not authorize private cause of action to recover prior cost of cleaning up toxic waste that does not continue to pose danger to health or environment at time of suit.

Judgment of Court of Appeals reversed.

West Headnotes (4)

[1] Environmental Law

Hazardous, Dangerous, or Toxic Waste

Environmental Law

Response and Cleanup; Liability

Resource Conservation and Recovery Act (RCRA) is comprehensive statute that governs treatment, storage and disposal of solid and hazardous waste but, unlike CERCLA, RCRA's primary purpose is to reduce generation of hazardous waste and to ensure proper treatment, storage, and disposal of waste which is nonetheless generated so as to minimize

present and future threat to human health and environment, rather than to effectuate cleanup of toxic waste sites or to compensate those who have attended to remediation of environmental hazards. Solid Waste Disposal Act, § 1002 et seq., as amended, [42 U.S.C.A. § 6901](#) et seq.; Comprehensive Environmental Response, Compensation, and Liability Act of 1980, § 101 et seq., [42 U.S.C.A. § 9601](#) et seq.

[207 Cases that cite this headnote](#)**[2] Environmental Law**

Response and Cleanup; Monetary Relief

Environmental Law

Injunction

Remedial scheme of Resource Conservation and Recovery Act's (RCRA) citizen suit provision authorizes mandatory injunction to require responsible party to attend to cleanup and disposal of toxic waste or prohibitory injunction to restrain responsible party from further violating RCRA, but neither remedy contemplates private cause of action to recover prior response costs for cleaning up of toxic waste, regardless of whether costs are denominated “damages” or “equitable restitution.” Solid Waste Disposal Act, § 7002(a)(1)(B), as amended, [42 U.S.C.A. § 6972\(a\)\(1\)\(B\)](#).

[238 Cases that cite this headnote](#)**[3] Environmental Law**

Response and Cleanup; Monetary Relief

Provision of Resource Conservation and Recovery Act (RCRA) permitting citizen suit only upon showing that waste “may present imminent and substantial endangerment to health or environment” requires that endangerment threaten to occur immediately and excludes waste that no longer presents danger, which thus precludes private cause of action to recover prior response costs for cleanup of toxic waste which does not present danger at time of suit. Solid Waste Disposal Act, § 7002(a)(1)(B), as amended, [42 U.S.C.A. § 6972\(a\)\(1\)\(B\)](#).

[221 Cases that cite this headnote](#)

[4] Environmental Law

🔑 Response and Cleanup; Monetary Relief

Facts that citizen suit provision under Resource Conservation and Recovery Act (RCRA) does not contain statute of limitations, does not require showing of reasonableness of response costs, and allows suit only if government is not pursuing enforcement action supports conclusion that RCRA is not mechanism for private parties to recover their response costs for prior cleanup of toxic waste which does not present danger at time of suit. Solid Waste Disposal Act, § 7002(a)(1)(B), as amended, [42 U.S.C.A. § 6972\(a\)\(1\)\(B\)](#).

[193 Cases that cite this headnote](#)

****1252 *479 Syllabus ***

Three years after complying with a county order to clean up petroleum contamination discovered on its property, respondent KFC Western, Inc., brought this action under the citizen suit provision of the Resource Conservation and Recovery Act of 1976 (RCRA), [42 U.S.C. § 6972\(a\)](#), to recover its cleanup costs from petitioners, the Meghrigs. KFC claimed, among other things, that the contamination had previously posed an “imminent and substantial endangerment to health or the environment,” see [§ 6972\(a\)\(1\)\(B\)](#), and that the Meghrigs were responsible for “equitable restitution” under [§ 6972\(a\)](#) because, as prior owners of the property, they had contributed to the contaminated site. The District Court dismissed the complaint, holding that [§ 6972\(a\)](#) does not permit recovery of past cleanup costs and that [§ 6972\(a\)\(1\)\(B\)](#) does not authorize a cause of action for the remediation of toxic waste that does not pose an “imminent and substantial endangerment” at the time suit is filed. The Ninth Circuit disagreed on both points and reversed.

Held: [Section 6972](#) does not authorize a private cause of action to recover the prior cost of cleaning up toxic waste that does not, at the time of suit, continue to pose an endangerment to health or the environment. Pp. 1254–1256.

(a) A private party cannot recover the cost of a past cleanup effort under [§ 6972\(a\)](#), which authorizes district courts “to restrain any person [responsible for toxic waste], to order such person to take such other action as may be necessary, or both.” (Emphasis added.) Under a plain reading of this remedial scheme, a citizen plaintiff could seek a mandatory injunction that orders a responsible party to “take action” by attending to the cleanup and proper disposal of waste, or a prohibitory injunction that “restrains” a responsible party from further violating RCRA. Neither remedy, however, contemplates the award of past cleanup costs, whether denominated “damages” or “equitable restitution.” A comparison with the relief provided in the analogous, but not parallel, provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 demonstrates that Congress knows how to provide for the recovery of past cleanup costs, and that [§ 6972\(a\)](#) does not provide that remedy. Pp. 1254–1255.

***480 b) Section 6972(a)(1)(B)**—which permits citizen suits against persons responsible for “waste which *may present* an *imminent* and substantial endangerment to health or the environment” (emphasis added)—does not authorize a suit based upon an allegation that the contaminated site posed such an endangerment at some time in the past. This timing restriction’s plain meaning demonstrates that an endangerment can only be “imminent” if it threatens to occur immediately, and the reference to waste which “may present” imminent harm quite clearly excludes waste that no longer presents such a danger. This language implies that there must be a threat which is present *now*, although the impact of the threat may not be felt until later. It follows that [§ 6972\(a\)](#) was designed to provide a remedy that ameliorates present or obviates the risk of future “imminent” harms, not a remedy that compensates for past cleanup efforts. Other aspects of RCRA’s enforcement scheme strongly support this conclusion, and the existence of such an elaborate scheme refutes the Government’s contention that district courts may award past cleanup costs under their inherent equitable remedial authority. Pp. 1255–1256.

****1253 (c)** This Court does not consider whether a private party could seek to obtain an injunction requiring another party to pay cleanup costs arising after a RCRA citizen suit has been properly commenced. P. 1256.

[49 F.3d 518 \(C.A.9 1995\)](#), reversed.

O’CONNOR, J., delivered the opinion for a unanimous Court.

Attorneys and Law Firms

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Opinion

*481 Justice [O'CONNOR](#) delivered the opinion of the Court.

We consider whether § 7002 of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6972, authorizes a private cause of action to recover the prior cost of cleaning up toxic waste that does not, at the time of suit, continue to pose an endangerment to health or the environment. We conclude that it does not.

I

Respondent KFC Western, Inc. (KFC), owns and operates a “Kentucky Fried Chicken” restaurant on a parcel of property in Los Angeles. In 1988, KFC discovered during the course of a construction project that the property was contaminated with petroleum. The County of Los Angeles Department of Health Services ordered KFC to attend to the problem, and KFC spent \$211,000 removing and disposing of the oil-tainted soil.

Three years later, KFC brought this suit under the citizen suit provision of RCRA, 90 Stat. 2825, as amended, *482 42 U.S.C. § 6972(a),* seeking to recover these cleanup costs from petitioners Alan and Margaret Meghrig.

KFC claimed that the contaminated soil was a “solid waste” covered by RCRA, see 42 U.S.C. § 6903(27), that it had previously posed an “imminent and substantial endangerment to health or the environment,” see § 6972(a)(1)(B), and that

the Meghrigs were responsible for “equitable restitution” of KFC's cleanup costs under § 6972(a) because, as prior owners of the property, they had contributed to the waste's “past or present handling, storage, treatment, transportation, or disposal.” See App. 12–19 (first amended complaint).

The District Court held that § 6972(a) does not permit recovery of past cleanup costs and that § 6972(a)(1)(B) does not authorize a cause of action for the remediation of toxic waste that does not pose an “imminent and substantial endangerment to health or the environment” at the time suit is filed, and dismissed KFC's complaint. App. to Pet. for Cert. A21–A23. The Court of Appeals for the Ninth Circuit reversed, over a dissent, 49 F.3d 518, 524–528 (1995) (Brunetti, J.), finding that a district court had authority under § 6972(a) to award restitution of past cleanup costs, *id.*, at 521–523, and *483 that a private party can proceed with a suit under § 6972(a)(1)(B) upon an allegation that the waste at issue presented an “imminent and substantial endangerment” at the time it was cleaned up, *id.*, at 520–521.

The Ninth Circuit's conclusion regarding the remedies available under RCRA conflicts with the decision of the Court of Appeals for **1254 the Eighth Circuit in *Furrer v. Brown*, 62 F.3d 1092, 1100–1101 (1995), and its interpretation of the “imminent endangerment” requirement represents a novel application of federal statutory law. We granted certiorari to address the conflict between the Circuits and to consider the correctness of the Ninth Circuit's interpretation of RCRA, 515 U.S. 1192, 116 S.Ct. 41, 132 L.Ed.2d 922 (1995), and now reverse.

II

[1] RCRA is a comprehensive environmental statute that governs the treatment, storage, and disposal of solid and hazardous waste. See *Chicago v. Environmental Defense Fund*, 511 U.S. 328, 331–332, 114 S.Ct. 1588, 1589–1590, 128 L.Ed.2d 302 (1994). Unlike the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 94 Stat. 2767, as amended, 42 U.S.C. § 9601 *et seq.* RCRA is not principally designed to effectuate the cleanup of toxic waste sites or to compensate those who have attended to the remediation of environmental hazards. Cf. *General Electric Co. v. Litton Industrial Automation Systems, Inc.*, 920 F.2d 1415, 1422 (C.A.8 1990) (the “two ... main purposes of CERCLA” are “prompt cleanup of hazardous waste sites and imposition of all cleanup costs on

the responsible party”). RCRA's primary purpose, rather, is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, “so as to minimize the present and future threat to human health and the environment.” 42 U.S.C. § 6902(b).

Chief responsibility for the implementation and enforcement of RCRA rests with the Administrator of the Environmental *484 Protection Agency (EPA), see §§ 6928, 6973, but like other environmental laws, RCRA contains a citizen suit provision, § 6972, which permits private citizens to enforce its provisions in some circumstances.

Two requirements of § 6972(a) defeat KFC's suit against the Meghrihs. The first concerns the necessary timing of a citizen suit brought under § 6972(a)(1)(B): That section permits a private party to bring suit against certain responsible persons, including former owners, “who ha[ve] contributed or who [are] contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which *may present an imminent* and substantial endangerment to health or the environment.” (Emphasis added.) The second defines the remedies a district court can award in a suit brought under § 6972(a)(1)(B): Section 6972(a) authorizes district courts “to *restrain* any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste ..., to *order such person to take such other action as may be necessary*, or both.” (Emphasis added.)

[2] It is apparent from the two remedies described in § 6972(a) that RCRA's citizen suit provision is not directed at providing compensation for past cleanup efforts. Under a plain reading of this remedial scheme, a private citizen suing under § 6972(a)(1)(B) could seek a mandatory injunction, *i.e.*, one that orders a responsible party to “take action” by attending to the cleanup and proper disposal of toxic waste, or a prohibitory injunction, *i.e.*, one that “restrains” a responsible party from further violating RCRA. Neither remedy, however, is susceptible of the interpretation adopted by the Ninth Circuit, as neither contemplates the award of past cleanup costs, whether these are denominated “damages” or “equitable restitution.”

In this regard, a comparison between the relief available under RCRA's citizen suit provision and that which Congress *485 has provided in the analogous, but not parallel, provisions

of CERCLA is telling. CERCLA was passed several years after RCRA went into effect, and it is designed to address many of the same toxic waste problems that inspired the passage of RCRA. Compare 42 U.S.C. § 6903(5). (RCRA definition of “hazardous waste”) and § 6903(27) (RCRA definition of “solid waste”) with § 9601(14) (CERCLA provision incorporating certain “hazardous substance[s],” but specifically excluding **1255 petroleum). CERCLA differs markedly from RCRA, however, in the remedies it provides. CERCLA's citizen suit provision mimics § 6972(a) in providing district courts with the authority “to order such action as may be necessary to correct the violation” of any CERCLA standard or regulation. 42 U.S.C. § 9659(c). But CERCLA expressly permits the Government to recover “all costs of removal or remedial action,” § 9607(a)(4)(A), and it expressly permits the recovery of any “necessary costs of response, incurred by any ... person consistent with the national contingency plan,” § 9607(a)(4)(B). CERCLA also provides that “[a]ny person may seek contribution from any other person who is liable or potentially liable” for these response costs. See § 9613(f)(1). Congress thus demonstrated in CERCLA that it knew how to provide for the recovery of cleanup costs, and that the language used to define the remedies under RCRA does not provide that remedy.

[3] That RCRA's citizen suit provision was not intended to provide a remedy for past cleanup costs is further apparent from the harm at which it is directed. Section 6972(a)(1)(B) permits a private party to bring suit only upon a showing that the solid or hazardous waste at issue “may present an imminent and substantial endangerment to health or the environment.” The meaning of this timing restriction is plain: An endangerment can only be “imminent” if it “threaten[s] to occur immediately,” Webster's New International Dictionary of English Language 1245 (2d ed.1934), and the reference *486 to waste which “may present” imminent harm quite clearly excludes waste that no longer presents such a danger. As the Ninth Circuit itself intimated in *Price v. United States Navy*, 39 F.3d 1011, 1019 (1994), this language “implies that there must be a threat which is present *now*, although the impact of the threat may not be felt until later.” It follows that § 6972(a) was designed to provide a remedy that ameliorates present or obviates the risk of future “imminent” harms, not a remedy that compensates for past cleanup efforts. Cf. § 6902(b) (national policy behind RCRA is “to minimize the present and future threat to human health and the environment”).

[4] Other aspects of RCRA's enforcement scheme strongly support this conclusion. Unlike CERCLA, RCRA contains no statute of limitations, compare § 9613(g)(2) (limitations period in suits under CERCLA § 9607), and it does not require a showing that the response costs being sought are reasonable, compare §§ 9607(a)(4)(A) and (B) (costs recovered under CERCLA must be “consistent with the national contingency plan”). If Congress had intended § 6972(a) to function as a cost-recovery mechanism, the absence of these provisions would be striking. Moreover, with one limited exception, see *Hallstrom v. Tillamook County*, 493 U.S. 20, 26–27, 110 S.Ct. 304, 309, 107 L.Ed.2d 237 (1989) (noting exception to notice requirement “when there is a danger that hazardous waste will be discharged”), a private party may not bring suit under § 6972(a)(1)(B) without first giving 90 days' notice to the Administrator of the EPA, to “the State in which the alleged endangerment may occur,” and to potential defendants, see §§ 6972(b)(2)(A)(i)–(iii). And no citizen suit can proceed if either the EPA or the State has commenced, and is diligently prosecuting, a separate enforcement action, see §§ 6972(b)(2)(B) and (C). Therefore, if RCRA were designed to compensate private parties for their past cleanup efforts, it would be a wholly irrational mechanism for doing so. Those parties with insubstantial problems, problems that neither the State nor *487 the Federal Government feel compelled to address, could recover their response costs, whereas those parties whose waste problems were sufficiently severe as to attract the attention of Government officials would be left without a recovery.

Though it agrees that KFC's complaint is defective for failing properly to allege an “imminent and substantial endangerment,” the Government (as *amicus*) nonetheless joins KFC in arguing that § 6972(a) does not in all circumstances preclude an award of past cleanup costs. See Brief for United States as *Amicus Curiae* 22–28. The Government posits a situation in which suit is properly brought while the waste at issue **1256 continues to pose an imminent endangerment, and suggests that the plaintiff in such a case could seek equitable restitution of money previously spent on cleanup efforts. Echoing a similar argument made by KFC, see Brief for Respondent 11–19, the Government does not rely on the remedies expressly provided in § 6972(a), but rather cites a line of cases holding that district courts retain inherent authority to award any equitable remedy that is not expressly taken away from them by Congress. See, e. g., *Porter v. Warner Holding Co.*, 328 U.S. 395, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946); *Wyandotte Transp. Co. v. United States*, 389 U.S. 191, 88 S.Ct. 379, 19 L.Ed.2d 407 (1967);

Hecht Co. v. Bowles, 321 U.S. 321, 64 S.Ct. 587, 88 L.Ed. 754 (1944).

RCRA does not prevent a private party from recovering its cleanup costs under other federal or state laws, see § 6972(f) (preserving remedies under statutory and common law), but the limited remedies described in § 6972(a), along with the stark differences between the language of that section and the cost recovery provisions of CERCLA, amply demonstrate that Congress did not intend for a private citizen to be able to undertake a cleanup and then proceed to recover its costs under RCRA. As we explained in *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1, 14, 101 S.Ct. 2615, 2623, 69 L.Ed.2d 435 (1981), where Congress has provided “elaborate enforcement provisions” for remedying the violation *488 of a federal statute, as Congress has done with RCRA and CERCLA, “it cannot be assumed that Congress intended to authorize by implication additional judicial remedies for private citizens suing under” the statute. “[I]t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.” *Id.*, at 14–15, 101 S.Ct., at 2623 (quoting *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 19, 100 S.Ct. 242, 247, 62 L.Ed.2d 146 (1979)).

Without considering whether a private party could seek to obtain an injunction requiring another party to pay cleanup costs which arise after a RCRA citizen suit has been properly commenced, cf. *United States v. Price*, 688 F.2d 204, 211–213 (C.A.3 1982) (requiring funding of a diagnostic study is an appropriate form of relief in a suit brought by the Administrator under § 6973), or otherwise recover cleanup costs paid out after the invocation of RCRA's statutory process, we agree with the Meghrigs that a private party cannot recover the cost of a *past* cleanup effort under RCRA, and that KFC's complaint is defective for the reasons stated by the District Court. Section 6972(a) does not contemplate the award of past cleanup costs, and § 6972(a)(1)(B) permits a private party to bring suit only upon an allegation that the contaminated site presently poses an “imminent and substantial endangerment to health or the environment,” and not upon an allegation that it posed such an endangerment at some time in the past. The judgment of the Ninth Circuit is reversed.

It is so ordered.

All Citations

516 U.S. 479, 116 S.Ct. 1251, 134 L.Ed.2d 121, 42 ERC 1193,
64 USLW 4135, 26 Env'tl. L. Rep. 20,820, 96 Cal. Daily Op.
Serv. 1856, 96 Daily Journal D.A.R. 3147

Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.
- * [Section 6972\(a\)](#) provides, in relevant part:
“Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—
.....
“(1)(B) against any person, including ... any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment....
.....
“... The district court shall have jurisdiction ... to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both....”