No. 19-

IN THE

Supreme Court of the United States

JOSLYN MANUFACTURING CO., LLC AND JOSLYN CORP.,
Petitioners,

v.

VALBRUNA SLATER STEEL CORP. AND FORT WAYNE STEEL CORP.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), contains two different statutes of limitations for suits to recover environmental clean-up costs: (1) a three-year limitations period for suits to recover "removal" costs; and (2) a six-year period for suits to recover "remedial" costs. See 42 U.S.C. § 9613(g)(2)(A), (B). The three-year period to seek removal costs starts when the removal work is completed; the six-year period to seek remedial costs starts when physical on-site remedial construction begins.

The terms "removal" and "remedial" are defined terms under CERCLA. See 42 U.S.C. § 9601(23), (24). "Removal" activity generally consists of clean-up measures taken in response to immediate threats to public health and safety; "remedial" activity means "actions consistent with [a] permanent remedy." 42 U.S.C. § 9601(24).

The question presented is:

Whether the six-year statute of limitations for "remedial" work is triggered, as the court of appeals held below, only when the construction of a permanent solution for environmental contamination meets a threshold level of comprehensiveness.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners Joslyn Manufacturing Company, LLC and Joslyn Corporation were the defendants-appellants in the court below. Respondents Valbruna Slater Steel Corporation and Fort Wayne Steel Corporation were the plaintiffs-appellees in the court below.

Petitioner Joslyn Manufacturing Company, LLC is a Delaware limited liability company. Joslyn Company, also a Delaware limited liability company, owns 100% of Joslyn Manufacturing Company, LLC. Danaher Corporation, a publicly held company, owns 100% of Joslyn Company. Petitioner Joslyn Corporation was a Delaware corporation that ceased to exist in 1997.

RELATED PROCEEDINGS

There are no proceedings in state or federal courts that are directly related to this case.

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The opinion of the court of appeals is reported at 934 F.3d 553 (7th Cir. 2019). Pet. App. 1a-22a. The district court's unpublished decisions striking the statute of limitations defense and denying summary judgment are reproduced at Pet. App. 25a-31a and 32a-59a.

JURISDICTION

The court of appeals entered judgment on August 8, 2019, and denied a timely petition for rehearing en banc by order dated September 6, 2019. Pet. App. 60a. This Court extended the time to file a petition for a writ of certiorari to January 20, 2020. This petition is timely filed on January 21, 2020 due to the federal holiday on January 20, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are set forth in the appendix to this petition: 42 U.S.C. § 9613(g)(2) (providing a three-year statute of limitations for actions to recover removal costs and a six-year statute of limitations for actions to recover remediation costs); 42 U.S.C. § 9601(23) (defining "removal"); 42 U.S.C. § 9601(24) (defining "remedy" or "remedial action"). Pet. App. 61a-64a.

INTRODUCTION

The courts of appeals are in disarray over the correct application of CERCLA's limitations period for actions to recover clean-up costs. Multiple courts of appeals have adopted disparate tests for what constitutes initiation of remedial action that triggers CER-

CLA's six-year limitations period for recovery of "remediation" costs as opposed to the three-year period for "removal" costs. This Court's guidance is warranted to clarify this confusion and enable parties to know with greater certainty when a cause of action for cost recovery accrues and, more importantly, when a claim has expired.

Under CERCLA, "removal" actions are generally short-term actions to address an immediate threat to public health or the environment from the release or threatened release of hazardous materials. CERCLA requires suits to recover costs of removal actions to be filed within three years of the completion of the work. 42 U.S.C. § 9613(g)(2)(A). This encourages parties to address the threat to public health or the environment first and sue for costs afterwards.

Remedial actions, by contrast, are longer-term and indeed can go on for decades. The remedial work at issue here has been ongoing since 1981. Timely actions and finality would be impossible if the limitations period did not commence until remediation was completed. Accordingly, Congress provided a limitations period that commences, not with the completion of the work, but instead with the "*initiation* of physical on-site construction" "consistent with" a "permanent" remedy. 42 U.S.C. §§ 9613(g)(2)(B), 9601(24) (emphasis added). Suits must be filed within six years of the initiation of that type of clean-up effort.

The Seventh Circuit's decision—that otherwise permanent remedial work is merely "removal" if it resolves only a portion of the contamination at a site—does violence to the plain language of the statute and runs counter to Congress' intent. The decision below delays the accrual of actions to recover the cost of remedial activity until remedial work meets an amorphous level of comprehensiveness. This is the

exact opposite of what the statute says: "'remedial action' means those actions consistent with permanent remedy," and an action to recover remedial costs must be brought within six years after remediation *begins*. 42 U.S.C. §§ 9601(24), 9613(g)(2)(B).

The Seventh Circuit's decision also brings further confusion into the disagreement among the courts of appeals over whether the permanent containment or disposal of contamination at its source must be part of a "comprehensive" remedial action plan before it can trigger the statute of limitations for "remedial" activity. The Ninth and Fifth Circuits hold that the statute of limitations for "remedial" cost recovery is not triggered until a final remedial action plan has been adopted. See *California ex rel. Cal. Dep't of Toxic Substances Control* v. *Neville Chem. Co.*, 358 F.3d 661, 667 (9th Cir. 2004); *Geraghty & Miller, Inc.* v. *Conoco Inc.*, 234 F.3d 917, 927 (5th Cir. 2000), *abrogated on other grounds by Vine Street LLC* v. *Borg Warner Corp.*, 776 F.3d 312 (5th Cir. 2015). The Second Circuit has rejected that approach and holds that a permanent fix undertaken before adoption of a remedial action plan can trigger the six-year statute of limitations for "remedial" costs if it is consistent with a permanent remedy. *Schaefer* v. *Town of Victor*, 457 F.3d 188, 207 (2d Cir. 2006). Like the Second Circuit, the Seventh Circuit has rejected the Ninth Circuit's requirement of a ratified action plan. But, in the decision below, the court created yet a third test for starting the remedial statute of limitations, requiring that to qualify as remedial, the clean-up work, no matter how permanent, must be "meant to substantially resolve the bulk of the site's ongoing pollution problems." Pet. App. 17a.

This Court should grant certiorari to resolve the split of authority over the statutory meaning of "re-

medial" clean-up activity, to ensure the statutory text is enforced as written and thereby provide parties with notice that their exposure to clean-up costs has ended.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

CERCLA establishes "a regime of broad-ranging liability, permitting the government to recover its remediation expenses directly from parties responsible for pollution and authorizing private parties to pursue contribution or indemnification from potentially responsible parties for expenses incurred responding to environmental threats." *Commander Oil Corp.* v. *Barlo Equip. Corp.*, 215 F.3d 321, 326 (2d Cir. 2000) (citation omitted). Among other provisions, section 107(a) of CERCLA authorizes the government and certain private parties to bring suit against any of four categories of potentially responsible parties to recover costs of clean-up and prevention of future pollution at contaminated sites. 42 U.S.C. § 9607(a).

Section 113 of CERCLA distinguishes between removal, which "generally refers to a shortterm action taken to halt risks posed by hazardous wastes immediately," and remedial actions which "are longer term, more permanent responses." Pet. App. 15a.

CERCLA provides different statutes of limitations for recovery of removal costs and remediation costs. Actions to recover costs related to "removal actions" must be brought within three years after the completion of the removal action. 42 U.S.C. § 9613(g)(2)(A). Actions to recover costs related to "remediation," by contrast, must be brought within six years of the initiation of physical on-site construction of the remediation. *Id.* § 9613(g)(2)(B).

B. Factual and Procedural Background

From 1928 to 1981, petitioners and their predecessors (collectively "Joslyn") owned and operated a steel production business in Fort Wayne, Indiana (the "Site"). Pet. App. 2a. The Site was sold to Slater Steels Corporation ("Slater") in 1981. *Id.*

At that time, the Site was an Interim Status Treatment Disposal and Storage Facility under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.* ("RCRA"). Pet. App. 2a There were three hazardous waste storage units at the Site that required RCRA compliance: a waste pile; a drum storage area; and a former surface impoundment, which contained sludge generated in the steel-making process. Slater immediately began incurring environmental response costs to clean up and officially close these units in an effort to reduce its overall environmental costs and liability. *Id.* at 2a-3a.

Closing the impoundment required the most work. From 1981 to 1987, Slater conducted a series of excavations to dig up contaminated material and dispose of it offsite for the purpose of closing the impoundment. After each effort, Slater thought it had done enough to satisfy RCRA; each time, however, Indiana's regulatory agency wanted more excavated. Pet. App. 2a, 37a. In 1988, Slater entered into a Consent Decree with the U.S. Environmental Protection Agency ("EPA"), which provided in relevant part that if the impoundment could not be "closed by removal," it would be "closed by landfill." *Id.* at 2a; ECF No. 46-7, at 8-9.[1] Stated more plainly, Slater would construct a cap over the former impoundment to contain the

[1] All "ECF No." citations refer to the district court docket: *Valbruna Slater Steel Corp.* v. *Joslyn Mfg. Co.*, No. 1:10-cv-00044-JD (N.D. Ind.).

residual contamination in place. Pet. App. 2a. The cap would prevent rainwater from percolating through the residual contamination and spreading it farther, falling squarely within the statutory definition of "remedial action." See 42 U.S.C. § 9601(24) ("[T]hose actions consistent with permanent remedy . . . to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or to the environment.").

A reinforced concrete cap was constructed over the former impoundment in November 1991. Pet. App. 2a. A groundwater monitoring system was built around the impoundment in 1992. *Id.* at 3a. After monitoring results showed the cap was containing the contamination, the Indiana Department of Environmental Management ("IDEM") certified closure of the impoundment in 1999 on the condition that the other sources of contamination at the Site would be addressed. *Id.* Thus, the impoundment's "closure by landfill" met the definition of a CERCLA "operable unit," i.e., "a discrete action that comprises an incremental step toward comprehensively addressing site problems." 40 C.F.R. § 300.5.

On March 22, 2000, Indiana issued a Covenant Not to Sue for the project. (ECF No. 42-7, at 4-5.) The Certificate of Completion for the Voluntary Remediation Program and the Covenant were both conditioned on Slater addressing the other sources of contamination at the Site. (ECF No. 42-7, at 12, 5 ¶ 7.) On March 25, 2002, Slater entered into an Agreed Order with IDEM to do the other work. Pet. App. 36a-37a.

By 2003, however, Slater was bankrupt. Respondents acquired the Site at a bankruptcy auction in 2004. Pet. App. 4a. In 2005, respondents undertook

treatment of trichloroethylene (TCE) contamination at the Site, and, in 2008, respondents entered the Site in Indiana's Voluntary Remediation program to address other sources of contamination. Respondents' 2012 Work Remediation Plan submitted to Indiana's environmental authorities described Slater's 1991 closure of the former impoundment as a "key component[]" of the Site's overall remedial strategy. (ECF No. 101-11, § 3.0, ¶ 1.)

Respondents brought this CERCLA action against Joslyn in 2010 to recover past and future clean-up costs. Pet. App. 4a. Joslyn moved for summary judgment, asserting the action was untimely under 42 U.S.C. § 9613(g)(2)(B). Joslyn argued that Slater initiated physical construction of the remedial action at the former surface impoundment either in 1981 (when excavation began), or at the latest in 1991 (when the concrete cap was poured), both of which occurred more than six years before respondents' 2010 suit was filed. *Id.* at 5a.

The district court denied Joslyn's motion, entered summary judgment for respondents on the issue of liability, and held a trial limited to the issue of damages and contribution. Pet. App. 5a. Ultimately, the district court awarded respondents $1,410,767.20 in past response costs and a declaratory judgment that Joslyn is responsible for 75% of respondents' future response costs. *Id.* at 5a-6a.

Joslyn appealed the rejection of its statute of limitations defense. The Seventh Circuit affirmed. It held that the reinforced concrete cap Slater constructed on the surface impoundment in 1991 did not trigger the six-year limitations period for recovery of the costs of remedial action because the cap constituted removal action, not remedial action. The court reasoned that treating the permanent concrete cap constructed on

the impoundment as "remedial" would "prioritize[] form (the cap's makeup) over function (the cap's purpose and effect)," because "[t]he concrete cap covered just one area" and was not "meant to substantially resolve the bulk of the site's ongoing pollution problems." Pet. App. 17a.

REASONS FOR GRANTING THE PETITION

The decision below exacerbates an acknowledged circuit split about the nature of clean-up work required to trigger CERCLA's six-year statute of limitations for actions to recover costs of "remediation." The Ninth and Fifth Circuits hold that the statute for remedial action is not triggered by clean-up work conducted before the adoption of a comprehensive remedial action plan. The Second Circuit rejects this requirement and requires only that clean-up work be consistent with a permanent remedy to trigger the six-year limitations period. The Seventh Circuit's decision below adopts yet a third test, requiring that permanent clean-up work meet a threshold level of comprehensiveness to trigger the six-year statute of limitations. This disagreement among the courts of appeals matters. The court below held that the cost-recovery action was timely; under the Second Circuit's approach in *Schaefer*, the action would be time-barred.

The Seventh Circuit's decision runs counter to the statutory language and fails to provide parties with clarity and predictability over when a cost-recovery action accrues and ignores the practical reality of CERCLA clean-up efforts. The test adopted by the court below also improperly extends the statute of limitations, possibly indefinitely, which severely interferes with the ability of all potentially responsible parties to be able to determine their liability risks.

This case presents an excellent vehicle to resolve the disagreement among the lower courts. The relevant facts are typical of CERCLA cost-recovery actions and are not in dispute. The Seventh Circuit's published opinion squarely addresses the question, and published decisions from other circuits present opposing views. This Court should grant certiorari and provide uniformity on this important and recurring question.

I. THE CIRCUITS HAVE ADOPTED DISPARATE TESTS FOR TRIGGERING CERCLA'S SIX-YEAR STATUTE OF LIMITATIONS FOR ACTIONS TO RECOVER COSTS OF REMEDIATION.

The decision below exacerbated an acknowledged circuit split about the nature of clean-up work required to trigger CERCLA's six-year statute of limitations for actions to recover costs of "remedial" work. The Ninth and Fifth Circuits on the one hand and the Second Circuit on the other have adopted directly contradictory tests. The Seventh Circuit has expressly rejected the Ninth Circuit's approach and, in the decision below, created yet a third approach for deciding when a permanent containment effort should be classified as "remediation" and thereby trigger the six-year limitations period. These disparate approaches to the statute of limitations mean that whether a given cost-recovery action is timely turns on the happenstance of geography. Cost recovery may be barred in New York, but not in Chicago. That is precisely the situation in which this Court should intervene.

The Ninth Circuit has adopted a bright-line rule that remedial action starts when a final remedial action plan is adopted, and therefore even permanent containment efforts must be treated as "removal" un-

til a final remedial plan is agreed upon. *Neville*, 358 F.3d at 666-67. The Ninth Circuit reasoned that the statute defines remedial as actions "consistent with permanent remedy," and "[f]or an action to be 'consistent with permanent remedy,' a permanent remedy [i.e., a final remedial action plan] must already have been adopted." *Id.* at 667. The Fifth Circuit has similarly held a clean-up program was not remedial prior to the state's approval of the final remediation plan. See *Geraghty & Miller, Inc.*, 234 F.3d at 927.

The Second Circuit has expressly rejected the Ninth Circuit's approach. The Second Circuit explained that the "plain language of the statute" makes no mention of a "final remedial action plan," and requires only that remedial activity be "consistent with permanent remedy." *Schaefer*, 457 F.3d at 207 (emphasis omitted). The Second Circuit held that using a crane to spread topsoil, sand, and gravel over a landfill was "consistent with permanent remedy" and thus triggered the six-year limitations period. *Id.* at 204.[2]

The Seventh Circuit has likewise rejected the requirement that a final remedial action plan be approved before clean-up efforts can be classified as remedial. *United States* v. *Navistar Int'l Transp. Corp.*, 152 F.3d 702, 712 (7th Cir. 1998) ("The statute is devoid of any reference that would lead us to conclude from its plain language that Congress intended to incorporate this specific aspect of the administrative process in establishing the actions that would trigger

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[2] The Sixth Circuit has also held that remedial action begins when construction is initiated if it is "consistent with" a "permanent remedy" but has declined to reach the question whether a final remediation plan is also required. *See GenCorp, Inc.* v. *Olin Corp.*, 390 F.3d 433, 444 (6th Cir. 2004).

the limitations period."). But in the decision below, the Seventh Circuit created a new, additional requirement. It held that the concrete cap and the containment of the surface impoundment at the Site was permanent, but not remedial, because it did not address any other areas of contamination at the Site and therefore was not sufficiently comprehensive. Pet. App. 17a.

Curiously and notwithstanding the Seventh Circuit's rejection of the Ninth Circuit's precise approach, the action would likely have been untimely under the Ninth Circuit's test. Although there was no final remedial action plan approved for this Site when the cap was built over the impoundment in 1991, a 1988 consent decree between Slater and the EPA provided that the impoundment would be "closed by landfill" if it could not be "closed by removal." This agreement on the means of remediation would likely satisfy the Ninth Circuit's requirement of an agreed action plan that would make the concrete cap qualify as initiation of remediation. See *Neville*, 358 F.3d at 671 (explaining that the result in *Navistar* would be the same under the Ninth Circuit test because the clay cap occurred after the EPA determined that "the landfill needed to be covered with a permanent clay cap to isolate the hazardous materials from the rest of the environment"). And because the containment system was plainly consistent with a permanent remedy (indeed, it is still in place and has since been incorporated into respondents' final remedial action plan), this cost-recovery action would be untimely under the Second Circuit's approach in *Schaefer*.

The disagreement among the courts of appeals also sows confusion among district courts in circuits that have not yet addressed the question. See, e.g., *United*

States v. *Raytheon Co.*, 334 F. Supp. 3d 519, 526 (D. Mass. 2018) (noting absence of First Circuit guidance and disagreeing with another district court on the proper test). The circuit split also creates uncertainty for environmental enforcement agencies, businesses, and insurers.

This Court should grant the petition for a writ of certiorari to resolve the confusion among the lower courts regarding the nature of clean-up work required to trigger CERCLA's six-year statute of limitations for cost-recovery actions. This Court's guidance is warranted to clarify this important—and often dispositive—threshold legal question.

II. THE DECISION BELOW IS CONTRARY TO THE STATUTORY LANGUAGE AND RISKS ELIMINATING THE STATUTE OF LIMITATIONS ALTOGETHER.

The Seventh Circuit's test cannot be reconciled with the relevant statutory language. CERCLA defines remedial work as "actions *consistent with permanent remedy* . . . to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment." 42 U.S.C. § 9601(24) (emphasis added). And it provides that suits for recovery of remediation costs must be brought "within 6 years after *initiation* of physical on-site construction of the remedial action." *Id.* § 9613(g)(2) (emphasis added). It says nothing about "substantially resolv[ing] the bulk of the site's ongoing pollution problems," as the court below required. Pet. App. 17a. The Seventh Circuit's test effectively reads out of the statute the phrases "*consistent with* permanent remedy" and "*initiation* of . . . construction of the remedial action." It requires instead that the clean-up work constitute the *entirety* of the per-

manent remedy and does not allow for phased initiation of clean-up efforts. The result is that the court below found that the cost-recovery action was timely filed *18 years* after installation of a permanent concrete cap and groundwater monitoring system to prevent the release of hazardous substances. There is no way to reconcile that outcome with the plain language and intent of CERCLA's two-part limitations scheme.

As the Seventh Circuit itself recognized in *Navistar*, "'remedial action' is a term broadly defined by the statute—a fact of which Congress was no doubt well aware when it incorporated that term in the statute of limitations." 152 F.3d at 712. If Congress had intended to require a "comprehensive" remedy that addressed the "bulk" of the contamination at a site before the limitations period could begin, it "surely would have provided [the courts] with a more explicit direction to that effect." *Id.*

The decision below sows uncertainty for the timely commencement of cost recovery-actions and ignores the practical reality of the mine-run of CERCLA clean-up efforts. The Seventh Circuit's approach dates the limitations period from a point that cannot be calibrated with any degree of certainty. When does otherwise permanent clean-up work become sufficiently "comprehensive" to be considered remedial? When it affects 25% of the contamination at a site? 40%? 50? More? What if there are different forms of contamination at the site (e.g., soil, sediment, groundwater) that are not amenable to quantitative comparison? The problems with this approach are obvious. It permits the commencement of the statute of limitations to become a wholly discretionary determination of when "enough" permanent clean-up work has been done to make it "remedial" and thus invites

widely disparate accrual dates across jurisdictions. It would also encourage strategic behavior to preclude the limitations period from ever accruing, thereby effectively eliminating the statute of limitations and imposing potentially indefinite liability. There is no possibility of repose embedded in the Seventh Circuit's approach to determining when the limitations period begins to run.

One of the primary functions of a limitations period, especially with regard to regulatory matters, is to ensure an intelligible record for review. Statutes of limitations "protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise." *United States* v. *Kubrick*, 444 U.S. 111, 117 (1979). The rule the Seventh Circuit adopted in this case has all of these risks. And it defeats the purpose of a statute of limitations which, above all else, is supposed to provide certainty for both the party seeking relief and the party who may be liable. See *Navistar*, 152 F.3d at 707-08 (Congress enacted 42 U.S.C. § 9613(g)(2)(B) to "serve the important purpose of encouraging the prompt filing of claims and by doing so of enhancing the likelihood of accurate determinations and removing debilitating uncertainty about legal liabilities").

The Seventh Circuit's test also fails to account for the practical realities of CERCLA clean-up efforts. The clean-up of large, contaminated industrial sites necessarily occurs in phases, and permanent fixes often commence before a complete remedial action plan is in place. It is time-consuming, expensive work. The fact that otherwise permanent remedial work frequently occurs on a piecemeal basis does not trans-

form that work into "removal" activity that delays indefinitely the start of the limitations period for the recovery of remedial costs.

Congress provided a statute of limitations for CERCLA cost-recovery actions to promote timely claims and accurate determinations, and to provide finality to potentially responsible parties. It pursued these purposes by requiring initial suits for remedial costs to be filed within six years after the initiation of physical on-site construction "consistent with permanent remedy." It did not require comprehensiveness. The Seventh Circuit erred by finding physical construction consistent with a permanent remedy not to trigger the statute of limitations.

III. THIS CASE INVOLVES A RECURRING ISSUE OF NATIONAL IMPORTANCE AND IS AN EXCELLENT VEHICLE TO RESOLVE THE ACKNOWLEDGED SPLIT AMONG THE COURTS OF APPEALS.

CERCLA applies nationwide, and the issue of what activities trigger the start of CERCLA's six-year statute of limitations for recovery of remediation costs arises frequently, as evidenced by the multiple district court and court of appeals decisions addressing the issue. E.g., *Navistar*, 152 F.3d 702; *Neville*, 358 F.3d 661; *Schaefer*, 457 F.3d 188; *Valbruna*, 934 F.3d 553; *Raytheon Co.*, 334 F. Supp. 3d 519. This Court's guidance on this important question of statutory interpretation would provide much-needed national uniformity.

This case is an excellent vehicle with which to resolve this question. The relevant facts are typical of CERCLA cost-recovery actions. This case involves a large industrial site that was in use for more than a century with multiple owners. The facts concerning

who caused the contamination of the Site are not in dispute, nor is there any dispute over the clean-up work that was performed, when it was performed, how it was performed, or by whom. The permanent remedy that was constructed—a concrete cap and groundwater monitoring system—is also a commonly used method for the disposal and containment of contamination. State environmental enforcement agencies were involved as early as 1982 and at various times reviewed and approved the remediation efforts at the Site. As such, the instant case contains all of the facts that are characteristic of those that were at issue in the cases that have divided the circuits over how to interpret CERCLA's limitations period for suits to recover remedial costs.

In addition, this Court now has the benefit of the views of multiple courts of appeals. The Seventh Circuit's published opinion squarely addresses the question, and published decisions from other circuits present opposing views with significant analysis.

A decision by this Court on this record will resolve the circuit split and provide the certainty that is essential to the proper operation of the statute of limitations.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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