No. 22-465

In the Supreme Court of the United States

GEORGIA-PACIFIC CONSUMER PRODUCTS LP, ET AL.,
Petitioners,

v.

INTERNATIONAL PAPER COMPANY and
WEYERHAEUSER COMPANY,
Respondents

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

BRIEF FOR RESPONDENT WEYERHAEUSER COMPANY IN OPPOSITION

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QUESTION PRESENTED

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes "action[s] for recovery of the costs" of an environmental cleanup, and provides that a district court may resolve that action by entering "a declaratory judgment on liability for response costs." 42 U.S.C. § 9613(g)(2). CERCLA also authorizes liable parties to bring actions for contribution, 42 U.S.C. § 9613(f)(1), but provides that any claim seeking contribution for response costs must be brought no more than three years after "the date of judgment in any action under this chapter for recovery of such costs," 42 U.S.C. § 9613(g)(3)(A). That three-year statute of limitations for contribution reinforces Congress's objective to bring together all the parties that are potentially responsible for a cleanup as soon as possible. *See Atlantic Richfield Co.* v. *Christian*, 140 S. Ct. 1335, 1345 (2020).

The question presented is: Whether a declaratory judgment in a CERCLA cost-recovery action that establishes a party's liability for all future response costs at a cleanup site is a "judgment in any action under this chapter for recovery of [response] costs" that triggers CERCLA's three-year statute of limitations for seeking contribution.

CORPORATE DISCLOSURE STATEMENT

Weyerhaeuser Company is a publicly held company. It has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATUTORY PROVISIONS INVOLVED

Section 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9613(g), provides in relevant part:

> **(3) Contribution**
>
> No action for contribution for any response costs or damages may be commenced more than 3 years after—
>
> (A) the date of judgment in any action under this chapter for recovery of such costs or damages, …

Other pertinent statutory provisions are included as an appendix to this brief. *See* App., *infra*, 1a-10a.[1]

[1] Like the petition for a writ of certiorari and the decision below, this brief refers to CERCLA's provisions as they appear in the Act itself. *See* Pet. 2 n.3; *Territory of Guam* v. *United States*, 141 S. Ct. 1608, 1611 n.1 (2021). CERCLA § 1xx refers to 42 U.S.C. § 96xx.

INTRODUCTION

For decades, paper mills owned or operated by petitioner Georgia-Pacific released harmful chemicals into the Kalamazoo River in Michigan. In the 1990s, Georgia-Pacific brought an action against various defendants (but not respondents) under Section 107(a) of CERCLA to recover the costs of cleaning up that pollution. At the end of that initial action, the district court found that Georgia-Pacific had polluted the River and entered a judgment declaring it liable for *all* of the "response costs" necessary to clean up the site.

More than ten years later, Georgia-Pacific brought another action seeking contribution from respondents for those same response costs. CERCLA provides that, when a party has been held liable for response costs at a hazardous waste site, that party may bring an action for contribution under Section 113(f)(1) against other persons or companies that are potentially liable for those costs. *See United States* v. *Atlantic Research Corp.*, 551 U.S. 128, 139 (2007). Congress also provided, however, that any contribution action must be brought within three years of the judgment in the initial CERCLA action that established the party's liability for the response costs: the statute of limitations for contribution begins running at "the date of judgment in any action under this chapter for recovery of such costs or damages." 42 U.S.C. § 9613(g)(3)(A).

In this case, the district court's judgment against Georgia-Pacific in the initial action concerning the Kalamazoo River site was entered in 1998. Pet. App. 7a. That declaratory judgment triggered Georgia-Pacific's three-year statute of limitations for contribution, because it was "the … judgment in an[] action under [CERCLA] for recovery of [response] costs." 42 U.S.C. § 9613(g)(3)(A). But Georgia-Pacific did not bring its contribution claims

against respondents until 2010 and 2011. The court of appeals thus correctly determined that those claims were untimely by several years.

Georgia-Pacific now contends that a declaratory judgment like the one entered against it "does not trigger" the Section 113(g)(3)(A) limitations period "because it is not a 'judgment … for recovery of such costs or damages.'" Pet. 4 (citation omitted). But as a matter of grammar, the phrase "for recovery of such costs or damages" plainly modifies the term "action"—not "judgment." 42 U.S.C. § 9613(g)(3)(A). The statute thus provides that a judgment—of whatever kind—triggers the statute of limitations if it was entered "in any action under this chapter for recovery of [response] costs or damages." *Ibid.* Nothing in the text depends on whether the initial judgment itself "quantifies and awards those costs or damages," *contra* Pet. 4, as opposed to a declaratory judgment that fixes liability for them. And Georgia-Pacific cannot seriously dispute that its adverse declaratory judgment was entered in "an[] action under [CERCLA] for recovery of [response] costs," 42 U.S.C. § 9613(g)(3)(A): CERCLA expressly describes the Section 107 action that ultimately produced that judgment as "[a]n initial action for recovery of … costs," 42 U.S.C. § 9613(g)(2).

The Sixth Circuit's interpretation of Section 113(g)(3)(A) is by far the best reading of the statutory text. It also accords with Congress's core purposes for CERCLA "to promote the *timely*" and effective "cleanup of hazardous waste sites" by bringing all the parties potentially involved in a cleanup to the bargaining table as soon as possible. *Atlantic Richfield Co.* v. *Christian*, 140 S. Ct. 1335, 1345 (2020) (emphasis added; citation omitted). Georgia-Pacific's interpretation, by contrast, would frustrate Congress's purposes by allowing liable parties

to wait decades (or longer) to seek contribution, wasting valuable cleanup time and risking the loss of important evidence concerning events that may have occurred many years before. Indeed, on Georgia-Pacific's reading, it is not clear that the statute of limitations for contribution would *ever* begin to run in most CERCLA cases.

Without any viable argument based on the statutory text, Georgia-Pacific asserts that this Court should grant review because the court of appeals' decision conflicts with the First Circuit's decision in *American Cyanamid* v. *Capuano*, 381 F.3d 6 (2004). But that assertion is incorrect for the reasons that the Sixth Circuit explained below. Pet. App. 20a–21a. Despite some "occasionally … broader language," *id.* at 21a, the First Circuit in *American Cyanamid* found that the procedural history of that case was materially unlike the history of this litigation.

There is no meaningful circuit conflict. And Georgia-Pacific has not shown that the question presented is important: the petition discusses only two court of appeals decisions addressing the issue since Section 113(g)(3) was enacted more than 35 years ago. Especially now that this Court has clarified the relationship between Sections 107(a) and 113(f) in *Atlantic Research*, the question presented is not likely to arise with any frequency. No further review is warranted.

STATEMENT

A. Statutory Background

1. Congress enacted CERCLA "to promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts are borne by those responsible for the contamination." *Atlantic Richfield Co.* v. *Christian*, 140 S. Ct. 1335, 1345 (2020) (citation omitted).

To achieve faster and more effective cleanups, CERCLA aims to bring all the potentially responsible parties (often called "PRPs") involved "to the bargaining—and clean-up—table sooner rather than later." *RSR Corp.* v. *Commercial Metals Co.*, 496 F.3d 552, 559 (6th Cir. 2007) (Sutton, J.) (quoting H.R. Rep. No. 253, 99th Cong., 1st Sess., pt. I, at 80 (1985)). In addition to bringing more money to the cleanup effort, Congress found that accelerating PRPs' interactions "assure[s] that evidence concerning liability and response costs is fresh" and "provide[s] some measure of finality to affected responsible parties." *Morrison Enterprises, LLC* v. *Dravo Corp.*, 638 F.3d 594, 610 (8th Cir. 2011) (citation omitted).

CERCLA makes a party "liable" for a cleanup if, among other things, it owned a contaminated site, operated the site, arranged for the disposal of hazardous waste at the site, or transported hazardous waste to the site, 42 U.S.C. § 9607(a)(1)–(4). Responsible parties must pay for "response costs"—the cost of removing contaminants from the site or remedying environmental harm. 42 U.S.C. § 9601(25); *see* 42 U.S.C. § 9601(23)–(24). Response costs are distinct from "damages" under CERCLA; the latter is defined specifically to mean "injury or loss of natural resources" "belonging to … or otherwise controlled by the United States," a State, or an Indian tribe. 42 U.S.C. § 9601(6) and (16). Only response costs—not damages—are at issue in this case. *See* D. Ct. Doc. 80, at 34 ¶ 197 (petitioner's operative complaint seeking to "allocate response costs among liable parties").

2. Section 107 is CERCLA's "'cost-recovery' section." *Cooper Industries, Inc.* v. *Aviall Servs., Inc.*, 543 U.S. 157, 161 (2004); *see* 42 U.S.C. § 9613(g)(2) (referring to "[a]n initial action for recovery of the costs referred to in section 9607"). If the United States Government (or a

State or Indian Tribe) "performs the cleanup, it may recover its [response] costs from responsible parties" by bringing suit under Section 107(a)(4)(A). *Atlantic Richfield*, 140 S. Ct. at 1346. Alternatively, if a private party voluntarily incurs response costs, then it may bring a cost-recovery action against any other potentially responsible party under Section 107(a)(4)(B). *See United States* v. *Atlantic Research Corp.*, 551 U.S. 128, 139 (2007). The statute of limitations for a Section 107(a) action is keyed to the type and progress of the work performed at the site. *See* 42 U.S.C. 9613(g)(2). "Responsible parties are jointly and severally liable for the full cost of the cleanup" under Section 107, *Atlantic Richfield*, 140 S. Ct. at 1346, unless they can demonstrate a reasonable basis for apportioning each PRP's share of the harm, *Burlington N. & Santa Fe Ry. Co.* v. *United States*, 556 U.S. 599, 613–614 (2009).

A Section 107 action, in addition to determining liability for response costs that were incurred in the past by a PRP or the United States, frequently ends in "a declaratory judgment on liability for response costs" that will be needed in the future. 42 U.S.C. § 9613(g)(2). The entry of a declaratory judgment advances CERCLA's purposes by providing everyone involved in an ongoing cleanup with a measure of certainty about who bears legal responsibility for the cleanup's future costs. *See, e.g.*, *MPM Silicones, LLC* v. *Union Carbide Corp.*, 966 F.3d 200, 214 (2d Cir. 2020) ("Section 113(g)(2) permits a party to seek a declaratory judgment on a [PRP's] liability for any necessary future response costs."). CERCLA makes the declaratory judgment in a Section 107 action "binding on any subsequent action or actions to recover further response costs or damages." 42 U.S.C. § 9613(g)(2).

3. Consistent with CERCLA's goal to get more potentially responsible parties to the bargaining table

sooner, Section 113(f) creates a broad right of contribution: "Any person may seek contribution from any other person who is liable or potentially liable under [Section 107(a)], during or following any civil action under … [Section 107(a)]." 42 U.S.C. § 9613(f); *see Atlantic Research*, 551 U.S. at 132–133, 138–139.

Section 113(f) thus authorizes a PRP to seek contribution "before or after the establishment of common liability" under Section 107. *Atlantic Research*, 551 U.S. at 138–139. "In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate." 42 U.S.C. § 9613(f)(1). That equitable distribution can "blunt any inequit[ies]" that would otherwise result from joint and several liability. *Atlantic Research*, 551 U.S. at 140.

Section 113 also provides, however, that any action seeking contribution for response costs must be brought within three years of the judgment in the initial cost-recovery action that triggered the contribution claim: "No action for contribution for any response costs or damages may be commenced more than 3 years after—(A) the date of judgment in any action under this chapter for recovery of such costs or damages." 42 U.S.C. § 9613(g)(3).[2]

4. This Court in *Atlantic Research* clarified that Sections 107(a) and 113(f) "complement each other by providing causes of action 'to persons in different procedural circumstances.'" 551 U.S. at 139 (citation omitted). A responsible party may bring a Section 107 action against other PRPs only when it has *voluntarily* incurred cleanup costs. *Ibid.* By contrast, a party that has incurred a

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[2] Parties may also bring contribution actions within three years of certain kinds of settlements. 42 U.S.C. § 9613(f)(2) and (g)(3)(B).

"liability stemming from an action instituted under … § 107 … may pursue § 113(f) contribution," but may "not … choos[e] to impose joint and several liability on another PRP in an action under § 107(a)" and may not take advantage of Section 107's longer statute of limitations. *Id.* at 139–140 and n.6. "The choice of remedies simply does not exist" under CERCLA. *Id.* at 140.

Since *Atlantic Research*, the courts of appeals have uniformly determined that a party that is eligible to seek contribution under CERCLA—because it has been "ordered" by a court "to incur its own cleanup costs"—must proceed against other PRPs *only* under Section 113(f), not under Section 107(a). *Whittaker Corp.* v. *United States*, 825 F.3d 1002, 1007 & n.5 (9th Cir. 2016).

B. The Present Controversy

1. Georgia-Pacific or its corporate predecessors operated a de-inking mill along the Kalamazoo River known as the Kalamazoo Paper Company (KPC) Mill. Pet. App. 32a. For decades, Georgia-Pacific disposed of waste from the KPC Mill, including polychlorinated biphenyls (PCBs) from the de-inking of carbonless copy paper, by discharging it into the river and landfill areas adjacent to the river's banks. *Ibid.* Although other mills near the Kalamazoo River disposed of some papermaking waste, Georgia-Pacific's mill was notable for its scale: the KPC Mill was one of the two largest de-inking operations in the area. *Ibid.*; *see Kalamazoo River Study Grp.* v. *Rockwell Int'l*, 107 F. Supp. 2d 817, 830 (W.D. Mich. 2000), *aff'd*, 274 F.3d 1043 (6th Cir. 2001). For comparison, the Plainwell Mill operated at one time by Weyerhaeuser deinked much less paper and accordingly discharged "an order of magnitude" less PCB waste into the river. Pet. App. 100a.

Soon after the Kalamazoo River was added to the National Priorities List (NPL) of CERCLA cleanup sites in

1990, the State of Michigan identified the de-inking of recycled paper as the principal cause of PCB contamination. *See Kalamazoo River Study Grp.* v. *Rockwell Int'l Corp.*, 355 F.3d 574, 578 (6th Cir. 2004). Georgia-Pacific knew immediately that it had substantial liability for the cost of the cleanup. *See id.* at 578–579. Along with a handful of other mill-owning entities, Georgia-Pacific formed the Kalamazoo River Study Group (KRSG), which entered an administrative order on consent with the State to investigate site-wide remediation. *Id.* at 578. Georgia-Pacific agreed to pay 35% of the Group's costs. *Kalamazoo River*, 107 F. Supp. 2d at 821.

2. Facing significant costs to investigate and clean up at least 80 miles of the Kalamazoo River and at least five landfill areas, Georgia-Pacific set out to find other potentially responsible parties that might also owe response costs under CERCLA. In 1995, Georgia-Pacific and the other KRSG members brought a cost-recovery action under Section 107(a) against several other entities that had allegedly released PCBs into the River. Pet. App. 5a; *see Kalamazoo River*, 355 F.3d at 579. Georgia-Pacific elected not to name the respondents here, International Paper and Weyerhaeuser, as defendants in that initial action, even though counsel for one of the KRSG members had previously identified Weyerhaeuser as a past operator of the Plainwell Mill and had accused Weyerhaeuser of responsibility for PCB contamination. *See* D. Ct. Doc. 897-1, Trial Exhibit 2377 (letter from Hunton & Williams LLP to Weyerhaeuser, dated Dec. 22, 1993).

Some of the defendants in the *Kalamazoo River* cost-recovery action filed a counterclaim against Georgia-Pacific, asserting that the KRSG members had caused the PCB contamination and were responsible for the response costs to clean up the site. Pet. App. 6a; *see Atlantic*

Research, 551 U.S. at 140 (observing that CERCLA permits "a defendant PRP in … a § 107(a) suit" to "fil[e] a § 113(f) counterclaim" that "would necessitate the equitable apportionment of costs among the liable parties, including the PRP that filed the § 107(a) action").

Over the next eight years, the district court in that initial cost-recovery action entered judgment three times against Georgia-Pacific, finding that PCB contamination in the River had been caused by paper de-inking and declaring Georgia-Pacific liable for all of the response costs at the site. Pet. App. 6a–7a. In 1998, following a trial on liability, the court entered judgment against Georgia-Pacific and the other KRSG parties, finding that their PCB releases, "individually and together, [were] in nature, quantity and durability sufficient to require imposing the costs of response activities for the NPL Site upon each of those [KRSG] parties." D. Ct. Doc. 741-17, at 14. In 2000, the court declined to allocate any response costs to the non-KRSG parties and entered a declaratory judgment holding Georgia-Pacific liable for "*the entire cost* of response activities relating to the NPL Site." *Kalamazoo River*, 107 F. Supp. 2d at 840 (emphasis added). The court of appeals affirmed that judgment. *Kalamazoo River Study Grp.* v. *Rockwell Int'l Corp.*, 274 F.3d 1043 (6th Cir. 2001). In 2003, the district court again declined to require another non-KRSG entity "to share" in any "remediation of the site" with the KRSG parties. *Kalamazoo River Study Grp.* v. *Eaton Corp.*, 258 F. Supp. 2d 736, 760 (W.D. Mich. 2003). The court of appeals affirmed again. *Kalamazoo River*, 355 F.3d at 578.

By 1998, then—and no later than 2003—Georgia-Pacific knew beyond doubt that it was legally responsible for *all* of the response costs related to the Kalamazoo River site. And it knew further that obtaining any funds

from any other parties would require a prompt action for contribution under CERCLA Section 113(f).

3. Instead, Georgia-Pacific waited several additional years, until 2010, to bring this Section 113(f) contribution action against International Paper and another entity (NCR Corporation). Pet. App. 7a.[3] In 2011, Georgia-Pacific added a contribution claim against Weyerhaeuser. Pet. App. 7a. Georgia-Pacific's complaint asserted that its contribution claims were ripe because it "ha[d] paid in excess of $79 million to investigate and remediate the Kalamazoo" River site, and had been "required" by the *Kalamazoo River* judgment "to spend a significant amount of money in the future to remediate the site." D. Ct. Doc. 80, at 7–8 ¶¶ 29–30; *see Cooper Industries*, 543 U.S. at 160–161 (a private party "may not" seek "contribution under § 113(f)(1) from other liable parties" unless it has "been sued under … § 107(a)").[4]

Respondents sought summary judgment, arguing that Georgia-Pacific had failed to bring its contribution action within the statute of limitations. Pet. App. 8a–9a. The district court rejected that defense by "referencing general res judicata principles and citing no CERCLA cases." *Id.* at 16a. The court then held a trial and allocated liability for response costs between Georgia-Pacific (40%), NCR

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[3] NCR Corporation is no longer a party to this case, having dismissed its own appeal and declined to participate as an appellee in the court of appeals. *See* Pet ii n.2; Pet. App. 10a.

[4] Georgia-Pacific also pleaded claims against International Paper and Weyerhaeuser under Section 107, D. Ct. Doc. 80, at 30–32, 35–37, even though this Court had by then held that § 113(f) is the provision for seeking reimbursement for a "liability stemming from a" § 107 action and that a PRP "eligible to seek contribution under § 113(f)(1) … cannot simultaneously seek to recover the same expenses under § 107(a)." *Atlantic Research*, 551 U.S. at 139–140 and n.6.

(40%), International Paper (15%), and Weyerhaeuser (5%). *Id.* at 9a–10a.

4. The court of appeals unanimously reversed. Pet. App. 1a–27a. The court held that Georgia-Pacific's contribution claims were barred because they had been brought more than three years after the date of the declaratory judgment in the initial cost-recovery action that had established Georgia-Pacific's liability for all the response costs on the River. *Id.* at 16a–24a.

The court of appeals explained why "the statute's text" shows that "a declaratory judgment determining liability starts § 113(g)(3)(A)'s statute of limitations." Pet. App. 17a. The immediately preceding subsection provides that a § 107(a) action for recovery of response costs will end in a "declaratory judgment on liability for *response costs*," and § 113(g)(3)(A) then provides that a contribution action "for *any response costs*" may not be brought more than three years after "the date of judgment in any action under this chapter for recovery of *such costs*." *Id.* at 17a–18a (quoting 42 U.S.C. 9613(g)(2)–(3)(A)). Those repeated references in neighboring provisions "to a judgment for 'response costs'" "strongly suggest[] that the 'declaratory judgment on liability for response costs' mentioned in § 113(g)(2) can also serve as a 'judgment in any action under this chapter for recovery of such costs or damages'" that triggers the statute of limitations in § 113(g)(3)(A). *Id.* at 18a. And because the district court in the *Kalamazoo River* cost-recovery action had entered a "declaratory judgment on liability for response costs" in 1998, the statute of limitations for Georgia-Pacific's contribution action began to run at that time. *Id.* at 23a–24a.

The court of appeals also explained that its interpretation of Section 113(g)(3)(A) advances CERCLA's objective to get all the potentially responsible parties involved

in a cleanup "sooner rather than later." Pet. App. 19a (quoting *RSR Corp.*, 496 F.3d at 559). When the district court in *Kalamazoo River* declared Georgia-Pacific (and the other KRSG members) liable for "the entire cost of response activities relating to the [Kalamazoo] site," Georgia-Pacific knew that it had "the responsibility to pay for 'as-yet-unfinished' remedial work." *Id.* at 22a (citation omitted). While Georgia-Pacific "did not yet have a bill in hand" for a specific number of dollars, it knew that it was liable for the full amount—whatever it would be. *Ibid.* Georgia-Pacific was therefore on notice that it was obligated to bring any other PRPs to the table through a contribution action within three years.

The court of appeals rejected Georgia-Pacific's argument that its decision created a conflict with the First Circuit's decision in *American Cyanamid* v. *Capuano*, 381 F.3d 6 (2004). *See* Pet. App. 20a–21a. That case "involved two separate phases of environmental cleanup: one involving soil and one involving groundwater." *Ibid.* The First Circuit accordingly "did not deal with a case," like this one, where the contribution action sought reimbursement for the same response costs that had been at issue in the initial Section 107 action. *Id.* at 21a. And in any event, the Sixth Circuit observed that the few broad sentences in *American Cyanamid* relied on by Georgia-Pacific had been rejected by the Ninth Circuit and did not meaningfully engage with the statutory text. *Id.* at 21a and n.4 (citing *ASARCO, LLC* v. *Celanese Chem. Co.*, 792 F.3d 1203, 1214 (9th Cir. 2015)).

5. Georgia-Pacific petitioned the court of appeals for rehearing en banc, though not on the argument advanced in the petition for a writ of certiorari. No judge requested a vote on the en banc petition. Pet. App. 170a.

REASONS FOR DENYING THE PETITION

Petitioner contends that this Court should take up this case to resolve a conflict between the decision below and *American Cyanamid* v. *Capuano*, 381 F.3d 6 (1st Cir. 2004). But as the Sixth Circuit explained, Georgia-Pacific's claim to a circuit split "weakens substantially when [*American Cyanamid* is] placed in context." Pet. App. 20a. Despite some "occasionally … broader language," *id.* at 21a, the First Circuit viewed the initial Section 107 action there as having been "associated only with" one particular part of the cleanup, 381 F.3d at 13, whereas here the initial cost-recovery action declared Georgia-Pacific liable for "*the entire cost* of response activities" on the Kalamazoo River, *Kalamazoo River Study Grp.* v. *Rockwell Int'l*, 107 F. Supp. 2d 817, 840 (W.D. Mich. 2000). Because the First Circuit treated the history of *American Cyanamid* as materially unlike the proceedings here, there is no meaningful circuit conflict that warrants this Court's review.

Moreover, the Sixth Circuit's decision here is correct. *Kalamazoo River* was unmistakably "an[] action under [CERCLA] for recovery of [response] costs," 42 U.S.C. § 9613(g)(3)(A)—CERCLA itself describes a Section 107 action as "[a]n initial action for recovery of … costs," 42 U.S.C. § 9613(g)(2). Georgia-Pacific's statute of limitations for seeking contribution therefore began running on "the date of judgment" in that "action." 42 U.S.C. § 9613(g)(3)(A). But Georgia-Pacific did not sue respondents for contribution until well more than three years after that 1998 judgment. The court of appeals' interpretation of Section 113(g)(3)(A) faithfully applies the statutory text and reinforces CERCLA's purpose to bring together all potentially responsible parties as soon as possible.

This case does not warrant further review for the additional reason that Georgia-Pacific has not shown that the question is important or likely to arise with any frequency, especially since this Court clarified the relationship between Sections 107(a) and 113(f) in *United States* v. *Atlantic Research Corp.*, 551 U.S. 128, 139–140 (2007).

The petition for a writ of certiorari should be denied.

A. There is no meaningful circuit conflict

Georgia-Pacific principally contends (Pet. 16–21) that the court of appeals' decision dismissing its contribution claims conflicts with the First Circuit's decision in *American Cyanamid*. Georgia-Pacific is incorrect. As the Sixth Circuit explained (Pet. App. 20a–21a), the full context of *American Cyanamid* shows that the First Circuit understood the history of that litigation to be materially unlike the CERCLA proceedings here.

1. *American Cyanamid* involved a contaminated former pig farm in Rhode Island known as the "Picillo site." 381 F.3d at 9. Some of the waste dumped on the site had been generated by a company called R & H. *Id.* at 10. In proceedings known as the "*O'Neil* litigation," the State of Rhode Island had brought a Section 107 action against R & H and other defendants to recover costs for soil remediation at the site. *Ibid.* In 1988, the district court found R & H liable for $991,937 in response costs that the State had incurred in cleaning up the soil. *Ibid.* The district court also held R & H liable for "all future costs of removal or remedial action incurred by the state relative to the Picillo site," including "any costs associated with the removal of contaminated soil piles." *Ibid.*

Five years later in 1993, after a study that had begun in 1987, the cleanup entered a new phase when the United States called for cleanup of groundwater on the Picillo site. *American Cyanamid*, 381 F.3d at 10. R & H entered

a consent decree with the Federal Government to pay $4.35 million to compensate the United States for response costs related to the groundwater cleanup. *Id.* at 11. Then two years later, in 1995, R & H filed a Section 113(f) contribution action against certain other PRPs to recover past and future response costs stemming from the groundwater cleanup. *Ibid.*

The First Circuit rejected the argument that R & H's contribution action was barred by the statute of limitations. In the main section of its opinion, the First Circuit reasoned that the 1988 "*O'Neil* judgment pertaining to soil remediation" "d[id] not trigger the statute of limitations for contribution claims relating to the groundwater remediation." *American Cyanamid*, 381 F.3d at 14–15; *see id.* at 13–16. The court observed that Section 113(g)(3)(A) provides that a contribution claim for response costs may not be brought more than three years after the date of judgment in an action "for recovery of *such costs*," 42 U.S.C. § 9613(g)(3)(A) (emphasis added), and the court read the phrase "such costs" to mean only "a particular claim or payment" for which the party seeking contribution had previously been held liable. Accordingly, if a CERCLA cleanup proceeds in phases—*i.e.*, with separate stages for different types of contamination—then a Section 107 judgment on liability for the response costs of one particular phase will start the statute-of-limitations for contribution for *those* response costs, but not for other response costs as to which liability has not yet been determined.

Separately, in a short section of its opinion spanning only two paragraphs, the First Circuit stated that the 1988 *O'Neil* "declaratory judgment did not trigger the statute of limitations for [contribution for] the groundwater cleanup because being held jointly and severally liable

for all future costs of removal or remedial action is not a judgment for the *recovery* of such costs." *American Cyanamid*, 381 F.3d at 12. Here again the court treated "[t]he *O'Neil* judgment" as having been entered in "an initial action for the recovery of costs associated only with the soil remediation." *Id.* at 13. But the court concluded that, while that declaratory judgment was "binding on any subsequent actions to recover response costs or damages," "it [was] not itself a judgment for the recovery of such costs or damages." *Ibid.*

2. Georgia-Pacific asserts (Pet. 18) that *American Cyanamid* "stand[s] for the proposition that" the statute of limitations for contribution in Section 113(g)(3)(A) is never triggered by "a declaratory judgment of liability that awards no costs." But the First Circuit's opinion should be "read as a whole," not by focusing—as Georgia-Pacific would—on "[c]ertain statements in the [c]ourt of [a]ppeals' opinion … in insolation." *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U.S. 657, 667–668 (1989). And the full context of *American Cyanamid* shows that the First Circuit perceived a material difference between the response costs sought in the earlier *O'Neil* litigation (for soil cleanup) and the costs at issue in the later contribution action (for groundwater cleanup). In the same portion of the opinion on which Georgia-Pacific relies, the First Circuit emphasized that "[t]he *O'Neil* judgment was an initial action for the recovery of costs associated *only* with the soil remediation." 381 F.3d at 13 (emphasis added). The latter action, by contrast, involved "contribution claims relating to the groundwater remediation." *Id.* at 14. That distinction informs the entire opinion.

The First Circuit's opinion is thus best read to hold that the *O'Neil* declaratory judgment did not trigger the

statute of limitations for groundwater costs because that judgment did not emerge from an action to recover *those costs*. *See id.* at 13 ("Although the district court entered a judgment on liability for future response costs, [it] did not enter a judgment for the recovery of such costs."). The opinion indicates that the court did not view itself as setting down a rule for a different case—like this one—where a party's contribution action seeks to recover the same type of response costs (for PCB releases) that had been at issue in the initial CERCLA cost-recovery action.

3. The Sixth Circuit recognized that a few sentences in *American Cyanamid*, if read in isolation, could not be reconciled with its interpretation of Section 113(g)(3)(A). Pet. App. 21a n.4. But even if the First Circuit's opinion were read to endorse Georgia-Pacific's broad rule that declaratory judgments never start the § 113(g)(3)(A) statute of limitations, that shallow disagreement would not warrant this Court's review for several reasons.

First, the short portion of *American Cyanamid* on which Georgia-Pacific relies had no significant statutory analysis. The First Circuit simply stated that a declaratory judgment "is not itself a judgment for the recovery of such costs or damages." 381 F.3d at 13. That misreads the text because the phrase "under this chapter for recovery of response costs" describes the type of "*action*" that must have occurred, not the type of judgment that must have been entered. 42 U.S.C. § 9613(g)(3)(A) (emphasis added); *see* pp. 24–25, *infra*. The First Circuit also did not consider the nearby CERCLA provision describing a Section 107 as an "action for recovery of … costs." 42 U.S.C. § 9613(g)(2).

Second, *American Cyanamid* is the only court of appeals decision that arguably supports Georgia-Pacific's reading of Section 113(g)(3)(A) since that provision was

added to CERCLA more than 35 years ago. *See Cooper Industries, Inc.* v. *Aviall Servs., Inc.*, 543 U.S. 157, 163 (2004) (describing the 1986 CERCLA amendments that "created a separate express right of contribution" and added the § 113(g)(3) statute of limitations). In the 18 years since *American Cyanamid*, no other court of appeals has followed it. The Ninth Circuit rejected *American Cyanamid*'s reasoning when it agreed with the Sixth Circuit about the trigger for Section 113(g)(3)(A): "The statute of limitations for a contribution claim is triggered by the date upon which the judgment or settlement that underlies the claim is entered"—not by whether the judgment quantified or awarded costs. *ASARCO, LLC* v. *Celanese Chem. Co.*, 792 F.3d 1203, 1210 (9th Cir. 2015). The Ninth Circuit, like the Sixth Circuit below, distinguished *American Cyanamid* as "h[olding] that a new claim for contribution based on new settlement liability (groundwater) cannot be barred by an earlier settlement for a different contribution claim (soil)." *Id.* at 1214.

Third, *American Cyanamid* was decided without the benefit of this Court's opinion in *Atlantic Research*, which clarified that Sections 107(a) and 113(f) are distinct remedies available "to persons in different procedural circumstances." 551 U.S. at 139 (citation omitted). In light of that clarification, every court of appeals since has recognized that "a party who *may* bring a contribution action for certain expenses"—because it has been sued or held liable in a Section 107 action—"*must* use the contribution action" and may not pursue other parties under Section 107. *Whittaker Corp.* v. *United States*, 825 F.3d 1002, 1007 & n.5 (9th Cir. 2016); *see* Pet. 11 (acknowledging the circuit courts' consensus). If Georgia-Pacific's question presented ever arose again, another First Circuit panel would be free to reconsider its position in light of *Atlantic Research*, and that court might well do so based on the far-

more-developed statutory analysis of more-recent courts of appeals.

This is thus precisely the sort of case that calls for further percolation. The shallow conflict, to the extent one exists, could well resolve on its own. If not, and even if the issue began to recur, this Court would benefit from the considered analysis of other courts of appeals. There is no need now for this Court to correct a few stray sentences uttered by one court of appeals 18 years ago.

B. The decision below is correct

Georgia-Pacific asserts (Pet. 4) that the Sixth Circuit misinterpreted Section 113(g)(3)(A) and that its decision will have "staggering" implications for future CERCLA cases. Georgia-Pacific is wrong on both counts. The Sixth Circuit applied the statutory text according to its terms. And it is *that* interpretation that advances CERCLA's purposes; Georgia-Pacific's would frustrate them.

1. The Sixth Circuit applied the statutory text and reinforced CERCLA's objectives

a. CERCLA starts running the three-year statute of limitations on *any* action seeking contribution for response costs at "the date of judgment in any action under this chapter for recovery of such costs." 42 U.S.C. § 9613(g)(3)(A). In Georgia-Pacific's case, "the … judgment in" such an action was entered in 1998 in the *Kalamazoo River* cost-recovery action that held Georgia-Pacific liable for all response costs on the River. *Ibid.*[5]

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[5] The court of appeals correctly determined that the 1998 judgment in *Kalamazoo River* was the judgment that triggered the statute of limitations for contribution, because that judgment fixed Georgia-Pacific's liability for response costs. Pet. App. 23a. "The 2000 and 2003 judgments simply allocated liability" between the defendants that had been previously adjudged liable in 1998; they "did not affect the KRSG members' already-fixed liability." *Ibid.* But the pre-

Georgia-Pacific cannot seriously dispute that *Kalamazoo River* was "an[ ] action under [CERCLA] for recovery of [response] costs." 42 U.S.C. § 9613(g)(3)(A). The statutory text itself expressly describes every Section 107 action as "[a]n initial action for recovery of … costs." 42 U.S.C. § 9613(g)(2); *see also ibid.* (heading referring to "actions for recovery of costs"). And this Court has described Section 107 as CERCLA's "'cost-recovery' section." *Cooper Industries*, 543 U.S. at 161.

Nothing in Section 113(g)(3)(A) provides that only judgments that *quantify* response costs trigger the statute of limitations. And nothing provides that the judgment must require the liable party to pay money *to another party*, as opposed to a declaratory judgment ordering the liable party to pay for all of the cleanup's future costs. The text is straightforward: If a party like Georgia-Pacific is found liable in "any action under this chapter for recovery of [response] costs," then the statute of limitations for contribution begins running at "the date of judgment in" that action. 42 U.S.C. § 9613(g)(3)(A).

The structure of Section 113 "as a whole," *Atlantic Research*, 551 U.S. at 135 (citation omitted), strengthens the conclusion that a declaratory judgment in a cost-recovery action triggers the statute of limitations for seeking contribution. The immediately preceding subsection, § 113(g)(2), refers to "[a]n initial action for recovery of … costs," and then provides that, "[i]n any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs." 42 U.S.C. § 9613(g)(2). Section 113(g)(3)(A) then provides that "the

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cise date of the judgment in *Kalamazoo River* "does not matter" to this case, "because each of the judgments" entered by the court in that action was "issued more than three years before [Georgia-Pacific] brought this action [for contribution] in 2010." *Id.* at 24a.

date of judgment in any action for recovery of such [response] costs or damages" triggers the statute of limitations for contribution. 42 U.S.C. 9613(g)(3)(A). That "interlocking language and structure," *Territory of Guam* v. *United States*, 141 S. Ct. 1608, 1613 (2021), confirms that a declaratory judgment allocating CERCLA liability is one common form of judgment "in an[] action under this chapter for recovery of costs" that triggers the § 113(g)(3)(A) statute of limitations.

b. The Sixth Circuit's interpretation of Section 113(g)(3)(A) reinforces Congress's core purposes for CERCLA "to promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts are borne by those responsible for the contamination." *Atlantic Richfield Co.* v. *Christian*, 140 S. Ct. 1335, 1345 (2020) (citation omitted).

For one thing, the Sixth Circuit's interpretation supports Congress's purpose to bring together all the potentially responsible parties associated with a cleanup "sooner rather than later." *RSR Corp.* v. *Commercial Metals Co.*, 496 F.3d 552, 559 (6th Cir. 2007) (Sutton, J.) (citation omitted). Parties like Georgia-Pacific that are held liable for response costs in a Section 107 action will be incentivized to immediately identify any other parties that are liable "or potentially liable" for those same response costs, and to bring them into the cleanup effort. 42 U.S.C. § 9613(f)(1). Accelerating contribution actions will bring more money to the bargaining table and support faster and more effective cleanups. It will also enable parties and courts to avoid as much as possible the loss of evidence concerning events from many years prior—a problem that arises frequently in CERCLA cases and that arose here. *See* Pet. App. 30a (district court observing that resolving Georgia-Pacific's counterclaim was compli-

cated by the fact that "many potential witnesses, such as employees and officers of the mills, are no longer around to share memories of long-ago events," and "[m]any operational records have been lost or discharged in the intervening years").

Relatedly, the Sixth Circuit's interpretation of Section 113(g)(3)(A) makes it much easier for parties to know when the statute of limitations for contribution runs, and this Court has explained that taking a "straightforward" approach to statutes of limitations has the important "additional 'benefit' of 'providing clarity.'" *Territory of Guam*, 141 S. Ct. at 1614 n.4 (citation omitted; cleaned up). On the Sixth Circuit's straightforward interpretation, a party like Georgia-Pacific that is held liable for response costs under CERCLA will know that its statute of limitations for contribution for those response costs runs from that judgment. There will be no need to sort out whether the district court entered *the right kind* of judgment in the initial action.

Under petitioner's interpretation, by contrast, it is not clear when, if ever, the statute of limitations for a contribution claim would run in a case like this. Georgia-Pacific asserts (Pet. 21) that the statute of limitations begins running only if a judgment "actually awards" response costs—that is, orders one party to pay response costs to another party. But Georgia-Pacific makes no attempt to explain why such a judgment would ever arise in a case like this, where the *Kalamazoo River* judgment held Georgia-Pacific liable for "*the entire cost of* response activities relating to the NPL Site." 107 F. Supp. 2d at 840. The whole point of the declaratory judgment was to establish that Georgia-Pacific was *not* entitled to any award of response costs, and that no future award would be coming because Georgia-Pacific was legally obligated to spend the

money required to clean up the River. Georgia-Pacific's theory thus amounts to a contention that its statute of limitations for seeking contribution should have continued in perpetuity, contrary to Congress's purpose to achieve "timely cleanup[s]." *Atlantic Richfield*, 140 S. Ct. at 1345; *see RSR Corp.*, 496 F.3d at 557 (rejecting a proposed interpretation of CERCLA that "would mean that there is *no time bar* on contribution actions," because that "would work considerable damage to the statute").

2. Petitioner's counterarguments are unavailing

Contrary to Georgia-Pacific's assertion (Pet. 13), the Sixth Circuit did not at all "largely ignore[]" the statutory text. The court explained in detail why the text of Section 113(g)(3)(A) establishes that Georgia-Pacific's contribution claims were untimely, and why the supporting statutory structure reinforces that conclusion. Pet. App. 16a–24a. None of petitioner's arguments shows any flaw in the Sixth Circuit's reasoning.

a. Georgia-Pacific first contends (Pet. 22) that the statute of limitations "begins running only on 'the date of judgment … for *recovery*' of the costs or damages at issue." But that quotation hides a key part of the text inside the ellipsis: the statute runs from "the date of the judgment *in any action* under [CERCLA] for recovery of [response] costs or damages." 42 U.S.C. § 9613(g)(3)(A) (emphasis added). As a matter of ordinary grammar, the phrase "for recovery of such costs or damages" modifies "action"—not "judgment." *Ibid.* "When the syntax involves something other than a parallel series of nouns or verbs"—as it does in Section 113(g)(3)(A)—a prepositive or postpositive modifier normally applies only to the nearest reasonable referent." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 152 (2012); *see also Barnhardt* v. *Thomas*, 540 U.S. 20, 26 (2003) (apply-

ing "the grammatical 'rule'" that "a limiting clause or phrase … should ordinarily be read as modifying only the noun or phrase that it immediately follows") (citing 2A N. Singer, *Sutherland on Statutory Construction* § 47.33, p. 369 (6th rev. ed. 2000)).

Thus, the relevant question under § 113(g)(3)(A) is not, as Georgia-Pacific says (Pet. 22), whether the earlier CERCLA judgment "quantifies and awards [response costs] such that they can be *recovered*." The question instead is whether "any action under [CERCLA] for recovery of [response] costs" has gone to "judgment." 42 U.S.C. § 9613(g)(3)(A). Georgia-Pacific does not attempt to dispute that the *Kalamazoo River* judgment was entered in an action under CERCLA for recovery of response costs. And in any event, as explained above, CERCLA provides that a Section 107 action *is* an "action for recovery of … response costs," and that such an action can and should end in a "declaratory judgment on liability for response costs." 42 U.S.C. § 9613(g)(2).

b. Georgia-Pacific next points (Pet. 22) to Section 113(g)(3)(A)'s "use of the definite article 'the,'" arguing that "[b]y tying the statute of limitations to '*the* date of judgment"—not "*a* date of judgment'—the statutory text presupposes that only a single date of judgment will qualify." And "a bare declaratory judgment of liability cannot be that singular judgment," Georgia-Pacific says, "because such a declaratory judgment requires one or more later judgments in order to actually award any costs." Pet. 22–23.

Georgia-Pacific misunderstands the import of a CERCLA declaratory judgment. Section 113(g)(3)(A) refers to "*the* judgment" (singular) for the simple reason that an initial cost-recovery action will generally end in a single judgment. Where, as here, a declaratory judgment

holds a party like Georgia-Pacific liable for future response costs, there is no need for any future judgment to award dollars: the liable party must pay for the ongoing costs of the cleanup according to its share of the liability, and seek contribution from any other potentially liable parties within three years. Georgia-Pacific also briefly observes (Pet. 23) that Section 113(g)(2) provides that a declaratory judgment is "binding on any subsequent action or actions to recovery further response costs or damages." 42 U.S.C. 9613(g)(2). But that just means that a liable party may not contest the factual determinations in the initial Section 107 action (*e.g.*, the party's ownership of the relevant property) in a future contribution action or another Section 107 action concerning a different phase of the cleanup.

c. Georgia-Pacific invokes (Pet. 24) the common law of contribution, asserting that a common-law contribution claim typically does not accrue until a tortfeasor has paid more than its fair share of a common obligation. But regardless of when common-law contribution might be available, CERCLA's text expressly permits a liable party like Georgia-Pacific to "seek contribution from any other person who is liable or potentially liable under [Section 107(a)], *during or following* any civil action under [Section 107(a)]." 42 U.S.C. § 9613(f)(1) (emphasis added). The statute thus "permits suit *before or after* the establishment of common liability." *Atlantic Research*, 551 U.S. at 138–139 (emphasis added).

Relatedly, there is nothing to Georgia-Pacific's objection (Pet. 24) that "the Sixth Circuit's limitations rule threatens to foreclose § 113(f)(1) claims before they fully mature." A contribution claim accrues when a party like Georgia-Pacific has incurred "a predicate CERCLA *liability*," *Territory of Guam*, 141 S. Ct. at 1613 (emphasis

added). A declaratory judgment like the one entered against Georgia-Pacific here creates just such a liability.

Indeed, Georgia-Pacific's own complaint in this case shows why the Sixth Circuit's interpretation of Section 113(g)(3)(A) is correct. In order to plead that its contribution claim was ripe, Georgia-Pacific alleged that it had been "required to spend a significant amount of money in the future to remediate the site." D. Ct. Doc. 80, at 7–8 ¶¶ 29–30. That must have been a reference to the *Kalamazoo River* declaratory judgment, because only a party that has "been sued under … § 107(a)" may seek "contribution under § 113(f)(1) from other liable parties." *Cooper Industries*, 543 U.S. at 160–161. Yet Georgia-Pacific does not explain why the same judgment that caused its contribution claim to accrue for future costs that it had not already incurred—the *Kalamazoo River* declaratory judgment—would not be "the judgment" that triggered its statute of limitations on the contribution claim for those same costs. 42 U.S.C. § 9613(g)(3)(A).

d. Georgia Pacific protests (Pet. 25) that the Sixth Circuit's holding—that a declaratory judgment imposing liability for all future response costs triggers the Section 113(g)(3)(A) statute of limitations—would create "serious practical problems." But that prediction is severely undermined by the experience of the courts of appeals that, since 2007, have applied essentially the same rule to CERCLA *settlements* under Section 113(g)(3)(B). *See RSR Corp.*, 496 F.3d at 556–558 (holding that a settlement requiring a party to "assume all liability … for future remedial actions" triggers the statute of limitations for contribution); *see also ASARCO*, 792 F.3d at 1215 (same). Georgia-Pacific does not attempt to show that those courts have experienced any of the problems foretold in the petition for a writ of certiorari.

In any event, none of Georgia-Pacific's asserted problems has any substance. Georgia-Pacific argues (Pet. 26–29) that the Sixth Circuit's rule would impose draconian and arbitrary burdens on parties to cleanups. That is incorrect. Requiring liable parties like Georgia-Pacific to bring their contribution claims within three years after their liability was established *increases* the likelihood that the burdens of the cleanup will be shared with all other potentially liable parties. By helping to ensure that costs will be distributed as widely as possible, the Sixth Circuit's interpretation of Section 113(g)(3)(A) decreases the burden on each individual liable party.

Georgia-Pacific next asserts (Pet. 26–29) that the Sixth Circuit's interpretation would incentivize premature, protective suits. Not so. No party ever needs to bring a contribution action until it has been held liable in a Section 107 action. And if a party *has* been held liable, then it has three full years to investigate other parties potentially liable for the same response costs and bring a contribution claim. In fact, most liable parties will have far more than three years, because many investigation and cleanup activities take place before the first Section 107 action is ever filed. In a cleanup to remove hazardous waste from a site, for example, a PRP has three years from *completion* of the removal action (however long that might take) to initiate a Section 107 action, and then three years after the judgment in that Section 107 action to initiate a contribution action. 42 U.S.C. § 9613(g)(2).

Finally, Georgia-Pacific argues (Pet. 26–27) that the Sixth Circuit's rule would produce less accurate allocations of liability. But the opposite is true. It is Georgia-Pacific's rule that would cause accuracy to suffer by permitting a party that was declared liable in a cost-recovery action to wait a decade (or more) before pursuing other

PRPs. In the meantime, valuable evidence concerning events from many years ago may be lost. And the cleanup may be delayed.

C. The question presented does not warrant review

1. In addition to being wrong on the merits, Georgia-Pacific has not shown that there is any need for this Court's resolution of the question presented, or that the question is likely to arise with any frequency.

Georgia-Pacific apparently declined to bring its contribution claim within three years of the *Kalamazoo River* declaratory judgment because it believed, incorrectly, that it was entitled to sue respondents for the same response costs under both Section 113 *and* Section 107—the latter of which carries a longer statute of limitations. *See* 42 U.S.C. § 9613(g)(2)(A)–(B). Georgia-Pacific's complaint in this case pleaded claims against respondents under both causes of action, indicating that it believed it could take advantage of both. See D. Ct. Doc. 80, at 28–38.

In *Atlantic Research*, however, this Court clarified that Georgia-Pacific's understanding of CERCLA was wrong: "[T]he remedies available in §§ 107(a) and 113(f) complement each other by providing causes of action 'to persons in different procedural circumstances.'" 551 U.S. at 139 (citation omitted). Section 107 is available for seeking "cost recovery (as distinct from contribution) by a private party that has itself incurred cleanup costs." *Ibid.* By contrast, a party like Georgia-Pacific that has been sued and incurred a "liability" under CERCLA "may pursue § 113(f) contribution," but "has not incurred its own costs of response and therefore cannot recover under § 107(a)." *Ibid.*; *see also ibid.* (holding that a party "eligible to seek contribution under § 113(f)(1) … cannot simultaneously seek to recover the same expenses under § 107(a)" and "cannot choose the 6-year statute of limitations for cost-

recovery actions over the shorter statute of limitations period for § 113(f) contribution claims").

Now that this Court has clarified the distinction between Section 107(a) cost-recovery actions and Section 113(f) contribution actions, parties like Georgia-Pacific that are found liable through CERCLA declaratory judgments will have no misunderstanding about their applicable statute of limitations. Those parties will know that Section 113(f) is their only remaining remedy, and that they have three years from the judgment in the Section 107 action to bring any claim for contribution. *See, e.g.*, *Whittaker Corp.*, 825 F.3d at 1007. Those parties will not wait to bring any available contribution action, as Georgia-Pacific did.

Indeed, Georgia-Pacific cites only one other case besides this one in which a PRP missed the deadline for filing a contribution action after a Section 107 judgment: *American Cyanamid*. And as explained above, that case had an unusually complex procedural history. Georgia-Pacific has not shown any substantial need for resolution of the question presented because it has not identified any other CERCLA parties, in all the years since Section 113(g)(3) was added to CERCLA in 1986, that raised a question about whether a declaratory judgment triggered the statute of limitations for seeking contribution. Much less has Georgia-Pacific shown any substantial question after this Court's clarification of the statute's proper operation in *Atlantic Research*.

2. Finally, even if the question presented otherwise warranted review, the unusual procedural history of this case would make it an unsuitable vehicle.

CERCLA Section 107 cases typically proceed by "splitting the [cleanup] process into manageable phases," such as for particular pollutants or portions of a cleanup

site. *Arconic, Inc.* v. *APC Investment Co.*, 969 F.3d 945, 949–950 (9th Cir. 2020). In that more-typical case pattern, the judgment or settlement in the initial action will resolve PRPs' liability only for particular portions of the overall response costs. And the courts of appeals have uniformly held that such a judgment or settlement triggers the § 113(g)(3) statute of limitations for contribution only for *those* costs—not for any other response costs that might be adjudicated in any other phase. *See*, *e.g.*, *Arconic*, 969 F.3d at 952; *RSR Corp.*, 496 F.3d at 559; *American Cyanamid*, 381 F.3d at 13–16.

In this case, however, the district court in the Section 107 cost-recovery action held Georgia-Pacific (and the other KRSG parties) liable for "*the entire cost* of response activities relating to the NPL Site." *Kalamazoo River*, 107 F. Supp. 2d at 840. The clarity and breadth of that judgment should have given Georgia-Pacific no questions about the scope of its liability, and no doubt about its obligation to pursue any contribution action within three years. But a broad judgment like that one was also unusual in CERCLA cases. *See, e.g.*, *MPM Silicones, LLC* v. *Union Carbide Corp.*, 966 F.3d 200, 236 (2d Cir. 2020) (describing district court's allocation of 95% of future costs to original property owner and 5% to subsequent owner); *Browning-Ferris Industries of Illinois, Inc.* v. *Ter Maat*, 195 F.3d 953, 955 (7th Cir. 1999) (describing allocation among many PRPs). If this Court were at all concerned that the court of appeals' interpretation of Section 113(g)(3)(A) has the potential to work an injustice, then it should wait for a case with a more typical fact pattern and a party that—unlike Georgia-Pacific—could have asserted a plausible basis for misunderstanding its statute of limitations for contribution.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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January 27, 2023

Statutory Appendix

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42 U.S.C. § 9601
Definitions

For purpose of this subchapter—

***

(6) The term "damages" means damages for injury or loss of natural resources as set forth in section 9607(a) or 9611(b) of this title.

***

(16) The term "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act), any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

***

(23) The terms "remove" or "removal" means[1] the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment,

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[1] So in original. Probably should be "mean".

which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 9604(b) of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act.

(24) The terms "remedy" or "remedial action" means[2] those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, 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. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the

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[2] So in original. Probably should be "mean".

transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(25) The terms "respond" or "response" means[3] remove, removal, remedy, and remedial action;,[4] all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto.

***

42 U.S.C. § 9607
Liability

(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration

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[3] So in original. Probably should be "mean".

[4] So in original.

vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26. For purposes of applying such amendments to interest

under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

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(f) Natural resources liability; designation of public trustees of natural resources

(1) Natural resources liability

In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: Provided, however, That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The

President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

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42 U.S.C. § 9613
Civil proceedings

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(f) Contribution

(1) Contribution

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. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title.

(2) Settlement

A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

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(g) Period in which action may be brought

(1) Actions for natural resource damages

Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 9601(6) of this title) under this chapter, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 9651(c) of this title.

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 9620 of this title (relating to Federal facilities), or any vessel or facility at which a remedial action under this chapter is otherwise scheduled, an action for damages under this chapter must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this chapter with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 9604(b) of this title or section 9620 of this title (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial

action does not apply to actions filed on or before October 17, 1986.

(2) Actions for recovery of costs

An initial action for recovery of the costs referred to in section 9607 of this title must be commenced--

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 9604(c)(1)(C) of this title for continued response action; and

(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 9607 of this title for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 9607 of this title for recovery of costs at any time after such costs have been incurred.

(3) Contribution

No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this chapter for recovery of such costs or damages, or

(B) the date of an administrative order under section 9622(g) of this title (relating to de minimis settlements) or 9622(h) of this title (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

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