No. 25-758

In the Supreme Court of the United States

MORELAND PROPERTIES LLC,
Petitioner,

v.

GOODYEAR TIRE & RUBBER CO.
AND GOODYEAR FARMS, INC.,
Respondents.

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

REPLY BRIEF IN SUPPORT OF CERTIORARI

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APRIL 17, 2026

PARTIES TO THE PROCEEDING

Petitioner is Moreland Properties, LLC

Respondents are Goodyear Tire & Rubber Co. (NASDAQ: GT) and Goodyear Farms, Inc.

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REPLY BRIEF

Under CERCLA, property owners may recover the costs of environmental remediation that is "consistent with" the National Contingency Plan ("NCP"). 42 U.S.C. § 9607(a)(4)(B). The implementing regulations define consistency as "substantial compliance." 40 C.F.R. § 300.700(c)(3)(i). Needless to say, courts must put interpretive flesh on those bones. Three circuits have concluded that cleanups overseen and approved by State regulators are entitled to a presumption of substantial compliance. Four other circuits, including the Ninth Circuit in a line of cases stretching back 20 years, have rejected that presumption and scrutinize State-approved cleanups in a procedure that not only demeans State regulators but also allows polluters to play Monday morning quarterback and escape liability.

Goodyear's brief in opposition employs two sleights of hand to discourage this Court from resolving the split. First, on virtually every page, Goodyear cites a purported "complete failure to conduct a feasibility study" to argue that the presumption recognized in three circuits would "effectively negat[e] the need to comply with" the NCP. BIO 2. In fact, this case is bursting with feasibility studies—including those the Arizona Department of Environmental Quality ("ADEQ") used to approve Goodyear's proposed cleanup. Unsurprisingly, ADEQ did not require Moreland to conduct ***another*** feasibility study for a chemical—arsenic—that has

no half-life and remains in the soil indefinitely. Clarifying that fact also crystalizes the issue presented: is Moreland's undisputed compliance with the cleanup that ADEQ oversaw, reviewed, and ultimately approved presumptively "consistent with" the NCP? Three circuits hold that it is. The Ninth Circuit does not, which opened the door for the district court (at Goodyear's urging) to second-guess ADEQ's reliance on existing feasibility studies to select an appropriate response action. Pet. App. 9a, 44a n.18.

Goodyear's second sleight of hand is to pretend that the petition asks the Court to resolve "a fact-specific dispute about one cleanup." BIO 31. Nineteen States did not join an amicus brief urging review of a specific cleanup. Nor did the federal government file an amicus brief in the Second Circuit endorsing the presumption to benefit a single property owner. See Pet. 33. States are central to CERCLA's operation. The cleanups they perform are presumptively consistent with the NCP; they have the ability to release liability even as to the federal government; and EPA can recognize the sufficiency of State response programs, as it did with Arizona. Pet. 6–7, 10. Within this framework, the circuits that interpret "consistent with" and "substantial compliance" to afford a presumption in favor of property owners who complete a cleanup under State oversight have the better of the argument. At the very least, this Court should decide that issue.

I. The Circuit Split Is Intractable.

The circuit courts are split on whether State oversight and approval of a private cleanup presumptively establish substantial compliance with the NCP. Respondents call the split "illusory," yet their own cited cases recognize the division they deny. Compare BIO 13 with *Morrison Enters.* v. *McShares, Inc.*, 302 F.3d 1127, 1137 (10th Cir. 2002) (declining to apply presumption to State-supervised cleanup, but acknowledging that "at least one other court has concluded that compliance with state agency orders is sufficient to establish compliance with the NCP" (citing *NutraSweet Co.* v. *X–L Eng'g* Co., 227 F.3d 776, 791 (7th Cir. 2000))).

This split is both acknowledged and enduring.

1. Three circuits presume substantial compliance with the NCP when a private party conducts a cleanup with State oversight and approval.

a. The Second Circuit articulated the presumption in *Niagara Mohawk Power Corp.* v. *Chevron USA, Inc.*, 596 F.3d 112, 136 (2d Cir. 2010): "compliance with a state consent decree is sufficient to prove adherence to the National Contingency Plan." That is exactly what the federal government urged in its amicus brief. U.S. Br., *Niagara Mohawk*, 2008 WL 10610074, at *2. The Second Circuit consciously joined the Seventh in this position: "One way of establishing compliance with the national plan is to conduct a response under the monitoring, and with the ultimate approval, of the state's envi-

ronmental agency." 596 F.3d at 136 (citing *NutraSweet*, 227 F.3d at 791).

Respondents have little to say about *Niagara Mohawk*, and they never mention the federal government's amicus brief. While they note that the Second Circuit's earlier *Bedford Affiliates* decision addressed the NCP's public-participation requirement, BIO 20, the same standard—substantial compliance—applies to all NCP requirements, which is why *Niagara Mohawk* announced a single presumption for the NCP as a whole. 596 F.3d at 140; 40 C.F.R. § 300.700(c)(3)(i) (compliance is evaluated "as a whole").

b. The Seventh Circuit applied the same presumption in its foundational *NutraSweet* decision. Respondents dismiss *NutraSweet* as *dicta* because the defendant waived his challenge. BIO 15. For starters, that was not Respondents' position four years ago when "Goodyear argue[d] that the fact that it has incurred costs in compliance with the Ohio EPA's orders creates a presumption that the costs are necessary and consistent with the NCP." *Goodyear Tire & Rubber Co.* v. *ConAgra Foods, Inc.*, 2021 WL 22401182, at *5 (S.D. Ohio Mar. 18, 2022) (citing *NutraSweet*).

Moreover, the Seventh Circuit's holding was that the trial court did not err in "finding that NutraSweet complied with the NCP" because the Illinois EPA "monitored" and "approved" the cleanup. *Id*. at 791–792. If there was any doubt as to the law in the Seventh Circuit, numerous district courts cite

Nutrasweet to apply the presumption. See, *e.g.*, *Allied Waste Transp., Inc.* v. *John Sexton Sand & Gravel Corp.*, 2016 WL 3443897, at *19 (N.D. Ill. June 23, 2016); *Valbruna Slater Steel Corp.* v. *Joslyn Mfg. Co.*, 260 F. Supp. 3d 988, 993 (N.D. Ind. 2017). Far from passing *dicta*, the *NutraSweet* rule governs in the Seventh Circuit and has become a frequent citation in other courts around the country. *Niagara Mohawk*, 596 F.3d at 137; *City of Bangor* v. *Citizens Commc'ns Co.*, 532 F.3d 70, 91 (1st Cir. 2008); *Exxon Mobil Corp.* v. *United States*, 335 F. Supp. 3d 889, 919 (S.D. Tex. 2018) (noting Second and Seventh Circuit alignment); *Sherwin-Williams Co.* v. *ARTRA Grp., Inc.*, 125 F. Supp. 2d 739, 753 (D. Md. 2001).

c. The First Circuit adopted a presumption of substantial compliance in *City of Bangor*, 532 F.3d at 91. It anchored its construction in the "[s]pecial role" CERCLA affords States in "defining allowable costs and cleanup standards." *Ibid.* Courts routinely cite *Bangor* as placing the First Circuit on the pro-presumption side of the split. See *Niagara Mohawk*, 596 F.3d at 137; *WASCO LLC* v. *Northrop Grumman Corp.*, 2021 WL 4509176, at *9 (W.D.N.C. Sept. 30, 2021) (citing *Bangor* and *NutraSweet*).

The First, Second, and Seventh Circuits give controlling weight to State oversight and approval in assessing substantial compliance, rather than second-guessing State regulators in derogation of CERCLA's cooperative federalism.

2. By contrast, four circuits hold that State oversight and approval does not create a presumption of substantial compliance.

a. The Tenth Circuit's decision in *Morrison* explicitly rejected the Seventh Circuit's approach. There, the plaintiff argued for "a presumption that its cleanup actions were consistent with the NCP because those actions were conducted pursuant to a consent order with the [State regulator]." *Morrison*, 302 F.3d at 1137. The Tenth Circuit rejected that argument but ***acknowledged*** the opposite rule in the Seventh Circuit: "at least one other court has concluded that compliance with state agency orders is sufficient to establish compliance with the NCP." *Ibid.* (citing *NutraSweet*).

b. The Eighth Circuit rejected the presumption in *Union Pac. R.R. Co.* v. *Reilly Indus., Inc.*, 215 F.3d 830 (8th Cir. 2000). There, the private party contended that it substantially complied with the NCP "as a matter of law" because of State regulators' "involvement at every stage of the remedy selection process." *Id.* at 836. The Eighth Circuit "disagree[d]." *Ibid.* Respondents characterize that holding as fact-bound, BIO 17, but a court's fact-bound examination of the cleanup is precisely what the presumption exists to avoid. The Eighth Circuit dissected the property owner's NCP compliance, just as the district court did below. 215 F.3d at 837–838. That scrutiny would not have occurred in the three circuits that held (after *Union Pacific*) that an owner "satisfie[s] the requirements of the National

Contingency Plan by settling its CERCLA liability with" the State. *Niagara Mohawk*, 596 F.3d at 140; see also 42 U.S.C. § 9628(b)(1)(A).

That is not to say that State oversight is "legally irrelevant" in the Eighth Circuit—a straw man Respondents repeat throughout their brief—but instead that it is always one of many factors contributing to substantial compliance. The problem with that approach is that it misunderstands States' role under CERCLA and discourages property owners from conducting cleanups because they cannot rely on State approval to avoid judicial second-guessing.

c. The Sixth Circuit likewise rejected the presumption in *Pierson Sand & Gravel, Inc.* v. *Pierson Twp.,* 1996 WL 338624 (6th Cir. 1996). There, the property owner contended that "because its cleanup was monitored by MDNR, a governmental agency, public comment was not necessary" to comply with the NCP. *Id*. at *5. The Sixth Circuit disagreed: "While governmental supervision of a cleanup may provide some of the guarantees as a cleanup subject to public comment and criticism, the NCP does not allow this type of substitution." *Ibid*.

Respondents downplay *Pierson Sand* in two ways. First, they note that the case considered only the NCP's public-participation requirement. BIO 18–19. But the substantial-compliance test applies to all aspects of the NCP. 40 C.F.R. § 300.700(c)(3)(i). Second, Respondents note that *Pierson Sand* is unpublished and 30 years old. BIO 18. But it remains good law. See, *e.g.*, *Charter*

Twp. of Lansing v. *Lansing Bd. of Water & Light*, 2018 WL 6529519, at *8 (W.D. Mich. Oct. 18, 2018) (following *Pierson Sand* to reject substantial compliance, "notwithstanding active governmental participation"). The Sixth Circuit also cemented its position in the split by declining to follow *NutraSweet* and setting its own "standards for vicarious public comment." *Reg'l Airport Auth. of Louisville* v. *LFG, LLC*, 460 F.3d 697, 709 (6th Cir. 2006).

As the Amici States point out, Goodyear should be familiar with the Sixth Circuit's approach, because it unsuccessfully argued ***for*** the presumption in the Southern District of Ohio just four years ago. States' Br. 19.

d. The Ninth Circuit declined to apply the presumption below, in keeping with *Carson Harbor Vill.* v. *County of Los Angeles*, 433 F.3d 1260 (9th Cir. 2006) and *Santa Clarita Valley Water Agency* v. *Whittaker Corp.*, 99 F.4th 458 (2024). In *Carson Harbor*, the Ninth Circuit observed that "[s]everal other courts have held that 'participation by a public agency is sufficient to demonstrate compliance with the [NCP] public comment requirement," but refused to apply the presumption to a cleanup approved by State regulators. 433 F.3d at 1266. Respondents offer no response to this rejection of the First, Second, and Seventh Circuits' approach, where "compliance with a state consent decree is sufficient to prove adherence to the National Contingency Plan." *Niagara Mohawk*, 596 F.3d at 136.

The *Santa Clarita* court likewise rejected the presumption in favor of a piecemeal re-examination of NCP compliance. It thus upheld substantial compliance for one aspect of a cleanup and denied it for another—despite State involvement and oversight of both.

3. Respondents try to obscure the split in several other ways, none of which is persuasive.

First, Respondents suggest the lower courts are all doing some version of the same thing. BIO at 13–14. That is true only at the highest level of abstraction: they all assess whether a private party's response substantially complies with the NCP. But the question presented is whether State oversight presumptively establishes that compliance.

Second, Respondents argue that the split is irrelevant because Moreland purportedly "ignore[d]" the NCP's feasibility-study requirement entirely. *E.g.*, BIO 20–23, 34. As noted above, Moreland did not ignore anything. It discussed with ADEQ the no-action alternative that Goodyear preferred, and ADEQ relied on decades of studies at the site to establish Moreland's response action. If Goodyear believes ADEQ's use of existing feasibility studies was so outrageous, it can attempt to rebut the presumption on that basis.

Finally, Respondents mischaracterize the split as limited to the NCP's public-participation requirement. BIO 20–21. It is not. By regulation, NCP compliance is assessed "as a whole" under a single standard—substantial compliance. 40 C.F.R.

§ 300.700(c)(3)(i). The Second Circuit did just that in *Niagara Mohawk*, 596 F.3d at 140, and the Seventh Circuit applied the presumption in a case challenging the "effectiveness" requirement, not public participation, *NutraSweet*, 227 F.3d at 791; see also *Sherwin-Williams*, 125 F. Supp. 2d at 753 (under *NutraSweet*, State approval is "sufficient to satisfy the requirement of consistency with the NCP as a whole, and not merely with respect to the public participation requirements").

II. Respondents' Vehicle Arguments Are Unavailing.

Respondents attempt six vehicle arguments, none of which have merit.

1. Respondents argue the Court should decline review because the decision below is unpublished. BIO 1, 26. "[T]he fact that the Court of Appeals' order under challenge here is unpublished carries ***no weight*** in [this Court's] decision to review the case." *C.I.R.* v. *McCoy*, 484 U.S. 3, 7 (1987) (emphasis added).

2. Respondents observe that the Ninth Circuit did not explicitly address the question presented. BIO 1, 23–24, 26, 32. That is both true and irrelevant.

a. This Court's rule is "pressed **or** passed upon," not "pressed **and** passed upon." *United States* v. *Williams*, 504 U.S. 36, 41 (1992). This rule "operates (as it is phrased) in the disjunctive." *Ibid*.

Respondents half-heartedly argue that Moreland did not sufficiently press the question presented below. BIO 24–25. That is demonstrably false. Moreland devoted a section of its opening brief—titled "ADEQ's Oversight and Participation Establishes that the Cleanup Substantially Complied with the NCP"—to the question presented. CA9 Appellant's Br. 56–64; see also CA9 Reply Br. 27–31. Moreland unequivocally urged the Ninth Circuit to "join the Seventh Circuit in treating state oversight and approval as establishing substantial compliance with the NCP." CA9 Appellant's Br. 64.

Respondents' argument to the contrary is mystifying; the Petition identifies the precise pages in which Moreland raised these arguments. Pet. 27. Respondents cannot credibly contest that Moreland pressed the issue below.

b. The Ninth Circuit's silence on the question presented reflects that court's controlling precedent aligning it with the no-presumption side of the split. Both *Carson Harbor* and *Santa Clarita* acknowledge divergent authority and explain the Ninth Circuit's rationale for breaking with the First, Second, and Seventh Circuits. There was no need for the current panel to retread that analysis, and its faithful application of circuit precedent is not a reason to deny review. See, *e.g.*, *Ames* v. *Ohio Dept. of Youth Servs.*, 605 U.S. 303 (2025) (reviewing and reversing Sixth Circuit's "background circumstances" Title VII rule even though decision below was per curiam application of long-settled circuit precedent).

For the same reason, Respondents are mistaken to assert the Ninth Circuit did not "decide" the question. BIO at 24. It necessarily did so by assessing Moreland's compliance with the NCP without crediting ADEQ's oversight and approval. In the First, Second, and Seventh Circuits, the analysis would have stopped before the Ninth Circuit's analysis began.

3. Respondents argue that the Court should deny certiorari because of Moreland's purported "complete failure to conduct a feasibility study." BIO 27. As noted, that is a factual misrepresentation. Moreover, nothing in CERCLA forbids ADEQ from using existing feasibility studies.

4. Relatedly, Respondents assert that an "alternative ground independently bars relief," pointing to CERCLA's requirement that cleanup costs be "necessary." BIO 27–28. But the Ninth Circuit never decided that issue, so it is not an alternative basis for the holding below, which relied exclusively on NCP compliance. This makes this case an ideal vehicle to resolve the question presented.

Incidentally, ADEQ concluded that the cleanup was necessary because Goodyear left catastrophic amounts of arsenic in the ground—up to 80 times what ADEQ deemed safe for human health and eight times the level "considered too toxic for local landfills." *Atl. Richfield Co.* v. *Christian*, 590 U.S. 1, 35 (2020); Ariz. Rev. Stat. §§ 49-152(A), 49-282.06(A); see 42 U.S.C. § 9621(d) (adoption of state standards for CERCLA cleanups).

5. Respondents assert this case is a poor vehicle because ADEQ's role was purportedly "narrow." BIO at 29–30. That is factually incorrect, but whether ADEQ's oversight was sufficient to earn the presumption of substantial compliance is a question the lower courts can resolve on remand. See Pet. 30.

6. Finally, Respondents argue the Court should let this decades-old split percolate further. BIO 31–32. That appears just pages after they downplay *Pierson Sand* for being a "30-year-old" decision. BIO 18. And it has been 24 years since the Tenth Circuit acknowledged the split in *Morrison*. Percolation is the last thing this issue needs.

At bottom, this case is a clean vehicle to resolve an acknowledged and entrenched split. The straightforward legal question is whether State oversight and approval of a private cleanup presumptively establish substantial compliance with the NCP. That issue is squarely presented and cries out for review.

III. Respondents' Merits Arguments Are Premature and Mistaken.

Goodyear's merits argument misses the question entirely. BIO 32–36. No one disputes the primacy of statutory text; the parties disagree on ***how*** a private party can establish that its cleanup was "consistent with" the NCP. 42 U.S.C. § 9607(a)(4)(B). That is a matter of statutory construction. As the Nineteen Amici States explain, the other provisions of CERCLA that assign significant responsibility to

the States confirm their special role in assuring conformity with the NCP. States' Br. 10–15.

Respondents are simply mistaken in asserting that Moreland and the Amici States are asking for a carve-out from CERCLA rather than asking the Court to construe an open-ended term based on surrounding text, structure, and application. The Court should do just that.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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