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07.27.2017 [Federal Court Says EPA Too Stringent on Recycling and Reclamation of Hazardous Secondary Materials](#)

By Ryan Pulkrabek

Companies that beneficially reuse hazardous secondary materials by recycling or reclaiming those materials rather than discarding them as hazardous waste need to be aware of a new federal court ruling that may provide additional flexibility in the reuse and recycling of those materials. In its July 7, 2017, opinion in *Am. Petroleum Inst. v. EPA*, No. 09-1038, slip op. (D.C. July 7, 2017), the U.S. Court of Appeals for the District of Columbia struck down two key elements of the EPA's 2015 Final Rule aimed at revising EPA's "Definition of Solid Waste": Factor 4 of the legitimacy test (i.e., "toxics along for the ride") and, in pertinent part, the Verified Recycler Exclusion pertaining to reclamation under RCRA.

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- 07.11.2017** [**CERCLA Due Diligence Requirements Revised to Reflect Updated Phase I Standard for Forested and Rural Land**](#)
By Paul Jacobson
- Purchasers of rural and forested land need to be aware of a recent change in EPA's environmental due diligence rules. On June 20, 2017, EPA published a [Direct Final Rule](#) in the Federal Register, amending the All Appropriate Inquiries (AAI) Rule, 40 CFR Part 312, to reflect 2016 updates to ASTM E2247, a standard for Phase I investigations on rural and forested land.
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- 06.19.2017** [**Subsurface Intrusion now a Factor for NPL Listings According to New EPA Final Rule**](#)
By Paul Jacobson
- On May 22, 2017, EPA finalized a new rule establishing subsurface intrusion as a new component of the Hazard Ranking System (HRS), the principal mechanism for placing contaminated sites on the National Priorities List (NPL).
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- 05.18.2017** [**EPA Administrator Consolidates Authority to Select Costly CERCLA Remedies**](#)
By Paul Jacobson, Baerbel E. Schiller
- EPA Administrator Scott Pruitt recently redelegated to the EPA Administrator the authority to select \$50 million plus site cleanup remedies under CERCLA Records of Decision or RODs. Some years ago, such authority had been delegated to the Regional Administrators in each EPA Region.
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- 09.20.2016** [**EPA Issues Guidance Encouraging Greener Cleanup Activities**](#)
By Paul Jacobson
- On August 2, EPA issued a guidance document encouraging parties to opt for "greener cleanup activities" when conducting CERCLA response actions, to reduce the environmental costs associated with these cleanups. The guidance document defines "greener cleanup activities" as "practices or technologies that reduce or mitigate the environmental impacts of CERCLA removal and remedial actions, while meeting regulatory and other cleanup requirements." Examples include generating renewable energy on-site, using energy-efficient equipment, and choosing land management methods that do not require mowing. The guidance document builds on EPA's 2009 Principles for Greener Cleanups, a general statement of intention to manage CERCLA cleanups in a more environmentally sustainable manner.
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- 08.21.2016** [**Avoiding Cleanup Liability for Industrial and Commercial Properties Under New Kansas Law**](#)
By Andrew C. Brought, James T. Price
- Effective July 1, 2016, buyers of industrial and commercial properties in Kansas may qualify for a Certificate of Environmental Liability Release (CELR) under the state's new Contaminated Property Redevelopment Act. This liability release for pre-existing contamination is important for prospective purchasers of industrial and commercial properties by helping to facilitate those transactions and allow the buyer to avoid state cleanup responsibility. But not only buyers benefit, as sellers can also demonstrate a framework that allows the transaction to proceed and maximize the property value without the buyer or seller taking on unnecessary risk if the proper steps to obtain the CELR are followed.
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- 06.25.2015** [**EPA Issues Final Vapor Intrusion Guidance and Declares EPA, not OSHA, in Charge of Indoor Air Quality at the Workplace**](#)
By Baerbel E. Schiller
- At long last, after operating under the draft Vapor Intrusion Guidance of 2002 for almost 13 years, EPA finally issued final vapor intrusion guidances on June 11, 2015, a specific guidance for petroleum vapor intrusion at leaking underground storage tank sites, and a more general technical guide for assessing and mitigating the vapor intrusion pathway at chlorinated solvent sites. (Technical Guide). In response to criticism that EPA did not subject the guidances to the public scrutiny of the administrative rule-making process, EPA allowed for a longer public comment period than is customary for guidances. Additionally, both vapor intrusion guidances were the subject of extensive discussions between EPA, various sister agencies, private industry, environmentalists, and the White House.
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- 04.07.2015** [**EPA Revises its Supplemental Environmental Project – SEP Policy**](#)
By Andrew C. Brought
- On March 10, 2015, EPA issued a new revised 2015 Update to its Supplemental Environmental Project (SEP) Policy, thereby superseding prior SEP policies.
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- 03.30.2015** [**Top 10 Things You Need to Know About Phase I Environmental Site Assessments**](#)
By Andrew C. Brought
- In a recent Midwest Real Estate News guest column, Spencer Fane Partner Andrew Brought shared his knowledge and insight on Phase I Environmental Site Assessments (ESAs) with readers. The article outlines the role and common misconceptions of environmental site assessments in property transactions and provides 10 important facts on ESAs as well as their impact on buyers and sellers involved in real estate transactions.
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- 01.19.2015** [**A Sham, a Waste? EPA's New Recycling and Hazardous Waste Rules Finalized**](#)
By Andrew C. Brought
- Last week, on January 13, 2015, EPA issued its new "Definition of Solid Waste" Final Rule in the Federal Register at 80 Fed. Reg. 1694. This new rulemaking will have significant impacts regarding how secondary hazardous materials are recycled and exempted from the hazardous waste regulations. Unless challenged (and by all accounts it appears at least certain aspects may be litigated based on initial comments by various industrial sectors) the rule becomes effective on July 13, 2015, where EPA is the authorized implementing agency (Iowa, Alaska, American Samoa, and Puerto Rico and the U.S. Virgin Islands). Because RCRA is a federally delegated program, other states will have to adopt the more stringent aspects of the rule discussed below.
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