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Latest Posts

07.26.2018 [Upcoming Proposition 65 Changes May Catch Companies Without Warning](#)

By Paul Jacobson

All companies in supply chains for products sold in California need to be aware of the law known as California's Proposition 65. This is especially true because significant changes to Proposition 65 requirements go into effect on August 30, 2018, increasing potential liability.

02.01.2018 [EPA Asks States to the Take the Lead in Environmental Enforcement](#)

By Baerbel E. Schiller, Ryan Pulkrabek

Recently, EPA issued an Interim OECA Guidance on EPA and state roles on managing enforcement and compliance assistance. See, [Interim OECA Guidance on Enhancing Regional—State Planning and Communication on Compliance Assurance Work in Authorized States](#). While EPA is seeking to emphasize cooperative federalism in modifying the emphasis of the [1986 revised policy on state/EPA enforcement agreements](#), as provided in the first footnote of the Guidance, the policy issued on January 22, 2018, appears to make the states the primary enforcer of environmental laws and provides a secondary role for EPA in that regard.

11.20.2017 [Trump Administration EPA to Focus Criminal Enforcement on Significant and Egregious Violators, Citing 1994 “Devaney Memorandum”](#)

By James T. Price, Baerbel E. Schiller, Andrew C. Brought

A high-ranking Environmental Protection Agency (EPA) enforcement official in the Trump Administration recently cited a 1994 memorandum by Earl Devaney, then Director of EPA's Office of Criminal Enforcement, as presenting guiding principles to select cases for criminal enforcement of environmental violations. The January 12, 1994, memorandum, “Exercise of Enforcement Discretion,” is often referred to as the “Devaney Memorandum,” and it is available at this link: <https://www.epa.gov/sites/production/files/documents/exercise.pdf>. This may signal that criminal enforcement of environmental laws under the Trump Administration will be limited to situations in which there has been significant actual or threatened environmental harm and truly culpable conduct.

10.24.2017 [EPA Administrator Directs EPA to Cease its “Sue and Settle” Practice](#)

By Paul Jacobson

On October 16, 2017, EPA Administrator Pruitt issued a [directive](#), requiring EPA to immediately cease a practice known as “sue and settle,” in response to concerns that EPA has lately been defending against suits brought by environmental organizations with insufficient vigor. The “sue and settle” concept is not defined in relation to a specific political party or view of environmental protection. Rather, it is the concept that political parties in power sometimes half-heartedly defend against lawsuits, when the relief sought by such suits is actually favored by the party in power.

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.

02.05.2017 [EPA and OSHA Increase Civil Penalties – Days Before New Administration](#)

By Andrew C. Brought

In January 2017, both EPA and OSHA increased civil penalties for new enforcement cases. While the increases became effective just days before the new Administration took office, the increases are a result of Congressional action in 2015 to annually adjust civil penalties for inflation by January 15 of each new calendar year.

09.18.2016 [Retail and Consumer Product Hazardous Waste – Update on Reverse Distribution and Aerosol Cans by EPA](#)

By Andrew C. Brought

On September 12, 2016, EPA issued its “Strategy for Addressing the Retail Sector under RCRA's Regulatory Framework.” The strategy document sets forth three actions the agency is expected to finalize in the short-term to help ease the RCRA burden on managing retail and consumer products that may trigger RCRA hazardous waste characteristics or RCRA listings once a decision to discard is made.

01.02.2016 [EPA Revamps Voluntary Self-Disclosure Audit Policy](#)

By Andrew C. Brought

Businesses and companies seeking to qualify for penalty mitigation and relief by submitting voluntary self-disclosures under EPA's Audit Policy need to be aware of significant changes and modifications that took effect in December 2015.

12.19.2015 [Criminal Prosecution of Worker Safety Violations – New DOJ Initiative to Increase Criminal Enforcement of OSHA Matters](#)

By Andrew C. Brought

On December 17, 2015, the U.S. Department of Justice (DOJ) announced a major new initiative to increase the number of criminal charges in worker endangerment and worker safety cases. Although the DOJ and the Occupational Safety and Health Administration (OSHA) have had a worker endangerment initiative for a number of years, the new changes are intended to bolster the likelihood and number of criminal prosecutions which historically have languished, according to DOJ, due to the OSH Act's misdemeanor criminal provisions.

06.13.2015 [Home Builder's Stormwater Violations at Construction Sites Result in \\$1 Million Enforcement Settlement](#)

By Andrew C. Brought, David C. Seitter

A residential home builder, Garden Homes, has agreed to resolve alleged stormwater violations with the EPA and U.S. Department of Justice, according to a June 8, 2015, Federal Register Notice. The settlement involves a civil penalty of \$225,000 and a Supplemental Environmental Project valued at \$780,000 involving the acquisition of 108 acres of land for preservation.

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