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BLOG EDITORS

[Andrew C. \(Drew\) Brought](#)

T 816.292.8886

abrought@spencerfane.com

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Latest Posts

09.24.2018 [New EPA Guidance Proposed on Clean Air Act Single Source Determinations – Industrial Air Emission Sources May Benefit](#)

By Paul Jacobson

On September 5, 2018, EPA issued a [draft guidance document](#) announcing a shift of the term "adjacent" in the context of the Clean Air Act's New Source Review (NSR) and title V operating permit programs which may benefit industrial air sources. This interpretation would focus EPA's attention on physical proximity of facilities when making source determinations, rejecting EPA's past practice of considering "functional interrelatedness."

04.10.2018 [The Superfund Petroleum Exclusion – Alive and Well in the Ninth Circuit](#)

By John Watson

In an unpublished opinion on March 21, 2018, the Ninth Circuit Court of Appeals affirmed the trial court's dismissal of a lawsuit citing the application of CERCLA's petroleum exclusion. The Court held that the site investigation at a former gas station did NOT identify anything other than petroleum or fractions thereof. Consequently, the Plaintiff did not plausibly allege any CERCLA "hazardous substances" were present at the site. The case was dismissed.

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.

01.24.2018 [EPA and OSHA Increase Civil Penalties](#)

By Paul Jacobson

In January 2018, both EPA and OSHA increased civil penalties for new enforcement cases. These increases are required by the Federal Civil Penalty Inflation Adjustment Act of 2015 (Inflationary Adjustment Act), which directs federal agencies to annually adjust civil penalties for inflation by January 15 of each new calendar year in order to "maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today's dollars." [83 Fed. Reg. 1190, at 1191 \(January 10, 2018\)](#).

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.

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.

03.12.2017 [Stormwater Runoff from Construction Activities Subject to New EPA 2017 General Permit](#)

By Shelby Wood, Andrew C. Brought

Construction companies, general contractors, developers, and property owners involved in land clearance and disturbance activities will want to take note of the new Stormwater Construction General Permit ("Construction General Permit") issued by the United States Environmental Protection Agency ("EPA") on February 17, 2017. As with earlier Construction General Permits, the 2017 permit applies to land clearance and disturbance activities greater than one acre and requires site operators to comply with best management practices ("BMPs"), effluent limits, and other permit requirements, including developing a Stormwater Pollution Prevention Plan ("SWPPP").

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.

12.11.2016 [EPA Issues Final Hazardous Waste Generator Improvements Rule](#)

By Paul Jacobson, Baerbel E. Schiller

On November 28, 2016, EPA published the final version of the Hazardous Waste Generator Improvements Rule (the Rule) in the Federal Register. Promulgated under the Resource Conservation and Recovery Act (RCRA), the Rule updates EPA's regulations governing generators of hazardous waste, most of which EPA promulgated in the 1980s. The Rule significantly revises the hazardous waste generator requirements.

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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