



Blogs / CERCLA / Superfund

Toggle
Navigation

RECORDED WEBINARS

- [Environmental Enforcement & Crimes Webinar – March 22, 2016](#)

BLOG TOPICS

- [Air Emissions Climate Change & Sustainability](#) (6)
- [Brownfields & Contaminated Properties](#) (13)
- [Environmental Cleanups](#) (12)
- [Environmental Compliance & Enforcement Defense](#) (24)
- [Environmental Litigation](#) (21)
- [Environmental Permitting](#) (9)
- [Environmental Statutes & Regulations](#) (27)
 - [CERCLA / Superfund](#) (12)
 - [Clean Air Act](#) (10)
 - [Clean Water Act](#) (11)
 - [EPCRA](#) (5)
 - [FIFRA](#) (4)
 - [RCRA / Hazardous Waste & Solid Waste](#) (10)
 - [TSCA](#) (4)
- [Fracking](#) (8)
- [Industries](#) (21)
 - [Construction](#) (13)
 - [Energy](#) (12)
 - [Health Care](#) (7)
 - [Life Sciences](#) (9)
 - [Manufacturing](#) (16)
 - [Petroleum](#) (11)
 - [Transportation](#) (9)
 - [Waste Management](#) (12)
- [OSHA / Health & Safety](#) (12)

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Latest Posts

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In an unpublished opinion on March 21, 2018, the Ninth Circuit Court of Appeals affirmed the trial court's dismissal of a lawsuit citing the application of CERCLA's petroleum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.

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.

09.20.2016 [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.

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.

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.

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.

06.06.2015 [Warehouse and Distribution Center Fined \\$3 Million for Anhydrous Ammonia Releases from its Industrial Refrigeration System](#)

By Andrew C. Brought

On June 2, 2015, the U.S. EPA and DOJ announced a \$3 million dollar settlement with Millard Refrigerated Services, a company specializing in refrigeration and distribution services to retail, food service, and food distribution companies. The settlement resolves alleged violations of the EPA's Risk Management Program, the Clean Air Act's General Duty Clause, and CERCLA and EPCRA release reporting requirements stemming from three releases of the industrial refrigerant anhydrous ammonia from the facility's Mobile Marine Terminal in Alabama. Among the release incidents was an August 2010 release involving hospitalization and medical treatment of individuals who were offsite working on decontaminating ships in response to the 2010 oil spill in the Gulf of Mexico.

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.

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.

1 2 › Showing 1-10 of 12 results [View All](#)