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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On September 5, 2018, EPA issued a [draft guidance document](#) announcing a shift of the term “adjacent” in the context of the Clean Air Act’s New Source Review (NSR) and title V operating permit programs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.”

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.

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.

03.26.2016 [EPA to Focus on RMP Chemical Accident Prevention and Safety, Issues Proposed Rule and Will Increase Enforcement](#)

By Andrew C. Brought

Businesses that store and use flammable and toxic chemicals that are regulated under EPA's Risk Management Plan (RMP) Program at 40 CFR Part 68 need to be aware of recent actions by the U.S. Environmental Protection Agency aimed at curtailing chemical accidents and releases through new proposed regulations and also enforcement. Facilities potentially subject to EPA's initiatives include chemical plants and refineries, POTWs that use chlorine as a disinfectant, as well as those companies that use and store bulk anhydrous ammonia as an industrial refrigerant (dairy operations, food and pharmaceutical manufacturing, cold storage warehousing) or as fertilizer (agricultural cooperatives, fertilizer distribution).

02.27.2016 [EPA Releases National Enforcement Initiatives](#)

By Andrew C. Brought

Beginning October 1, 2016, the U.S. Environmental Protection Agency (EPA) will target its enforcement efforts in seven different focused areas, including three areas designed to protect water quality, two initiatives aimed at reducing toxic air pollutants and reducing air pollution, an initiative to reduce accidental chemical releases from industrial facilities, and an enforcement initiative geared at energy extraction activities.

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.

07.01.2015 [EPA's Air Rules Must Consider Costs, Says U.S. Supreme Court](#)

On June 29, 2015, the United States Supreme Court announced its decision in *Michigan v. Environmental Protection Agency*, holding that EPA unreasonably interpreted a provision of the Clean Air Act regarding the regulation of power plants under the EPA's Mercury and Air Toxics Standard (MATS) (also referred to as the Utility MACT).

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.

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