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### Latest Posts

#### 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.

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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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**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.

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**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.

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**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.

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**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.

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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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**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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